TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 278.

MAYER S. BERNHEIMER AND LORIN S. BERNHEIMER, SURVIVING EXECUTORS OF THE LAST WILL AND TESTAMENT OF SIMON BERNHEIMER, DECEASED, PLAINTIFFS IN ERROR,

vs.

THEODORE R. CONVERSE, RECEIVER OF THE MINNESOTA THRESHER MANUFACTURING COMPANY.

No. 279.

MAX DREY, CHARLES D. BERNHEIMER, AND MEYER A. BERNHEIMER, EXECUTORS OF THE LAST WILL AND TESTAMENT OF ISAAC BERNHEIMER, DECEASED, PLAINTIFFS IN ERROR,

vs.

THEODORE R. CONVERSE, RECEIVER OF THE MINNESOTA THRESHER MANUFACTURING COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 30, 1906.

(20,233, 20,234.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 8, 1906.

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1 In the Supreme Court of the United States, October Term, 1905.

MAYER S. BERNHEIMER and LORIN S. BERNHEIMER, as Surviving Executors of the Last Will and Testament of Simon Bernheimer, Deceased, Plaintiffs in Error,

against

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Defendant in Error.

Writ of Error to the Circuit Court of the United States for the Southern District of New York.

To the Honorable Chief Justice of the United States:

The petitioners Mayer S. Bernheimer and Lorin S. Bernheimer as surviving executors of the last will and testament of Simon Bernheimer deceased, respectfully show that on the 14th day of March, A. D. 1906, the Circuit Court of the United States, in and for the Southern District of New York, rendered a judgment against your petitioners in a certain cause wherein Theodore R. Converse, as Receiver of the Minnesota Thresher Manufacturing Company was plaintiff, and your petitioners were defendants, for the sum of Four thousand two hundred and seventy eight and 56/100 ($4,278.56) dollars and Thirty nine and 51/100 ($39.51) dollars cost, amounting in all to the sum of Four thousand three hundred and eighteen and 7/100 ($4,318.07) dollars, and awarded execution thereon as will appear by reference to the record and proceedings in said cause:

And your petitioners claim the right to remove said judgment to the Supreme Court of the United States by writ of error under
2 the provisions of the Revised Statutes of the United States, and for citation and supersedeas.

And this they will ever pray, that said judgment be reversed, &c.

Dated, March 30, 1906.

MAYER S. BERNHEIMER,
LORIN S. BERNHEIMER,
As Surviving Executors of the Last Will and Testament of Simon Bernheimer, Deceased.
By LIEBMANN, NAUMBURG & TANZER,
Attorneys for Petitioners.

(Endorsed:) Supreme Court of the U. S., October Term, 1905. Mayer S. Bernheimer *et al*, etc., Plaintiffs in Error, against Theodore R. Converse, etc., Defendant in Error.—Petition for Writ of Error.—Liebmann Naumburg & Tanzer, Attorneys for Plaintiffs in Error, 32 Broadway, New York.—U. S. Circuit Court, Southern District New York. Filed Apr. 11, 1906, John A. Shields, Clerk.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable, the Judges of the Circuit Court of the United States for the Southern District of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you or some of you, between Theodore R. Converse, as Receiver of the Minnesota Thresher Manufacturing Company, plaintiff and Mayer S. Bernheimer and Lorin S. Bernheimer, as surviving executors of the last will and testament of Simon Bernheimer, deceased, defendants, a manifest error hath happened to the great damage of Mayer S. Bernheimer and Lorin S. Bernheimer, as surviving executors of the last will and testament of Simon Bernheimer, deceased, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 9th day of April in the Year of our Lord,
4 one thousand nine hundred and six.

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States for the Southern District of New York.

The foregoing writ is hereby allowed.

E. H. LACOMBE,
U. S. Circuit Judge.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages numbered from five to 171 inclusive contains a true and complete transcript of the record and proceedings had in said court in the case of Mayer S. Bernheimer and Lorin S. Bernheimer, as surviving executors of the last will and testament of Simon Bernheimer, deceased, plaintiffs in error, against Theodore R. Converse, as Receiver of the Minnesota Thresher Manufacturing Company, defendant in error, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of said Court to be hereunto affixed in the City of New York, in the Southern District of New York, in the Second Circuit, this 27th day of April, in the year of our Lord, one thousand nine hundred and six, and of the Independence of the United States the one hundred and Thirtieth.

JOHN A. SHIELDS, *Clerk*.

4½ [Endorsed:] Supreme Court of the U. S. October Term 1905. Mayer S. Bernheimer *et al.*, etc., Plaintiffs in error, *against* Theodore R. Converse, etc., Defendant in error. Writ of Error. Liebmann, Naumburg & Tanzer, Attorneys for plaintiffs in error, 32 Broadway New York. We hereby, this 10th day of April 1906, accept due personal service of this writ of error on behalf of Theodore R. Converse, defendant in error. Wilson & Wallis, attorneys for defendant in error. 1.45 pd. U. S. Circuit Court. Filed Apr. 11, 1906. Southern District New York. John A. Shields, Clerk. E. & Ac. 2458.

5 United States Circuit Court, Southern District of New York.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company,

against

MAYER S. BERNHEIMER and LORIN S. BERNHEIMER, as Surviving Executors of the Last Will and Testament of Simon Bernheimer, Deceased.

To the above-named defendants:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiffs attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, at the Borough of Manhattan in the City of New York, this 27th day of January, in the year one thousand nine hundred and four.

[L. S.] JOHN A. SHIELDS, *Clerk*.

WILSON & WALLIS,
Plaintiffs Attorneys, Office and Post Office Address 48 *Wall St., Borough of Manhattan, New York City.*

6 United States Circuit Court, Southern District of New York.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff,

against

MAYER S. BERNHEIMER and LORIN BERNHEIMER, as Surviving Executors of the Last Will and Testament of Simon Bernheimer, Deceased, Defendants.

Affidavit of Service.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Edward O. Kannofsky, being duly sworn, says: that he is over the age of twenty-one years, and that on the 28th day of January 1904, at No. 33 White Street in the Borough of Manhattan, New York City, he served the summons in this action, a copy of which is hereto annexed, together with a copy of the complaint therein mentioned on Lorin S. Bernheimer, one of the defendants in this action by delivering copies of the same to such defendant personally and leaving the same with him. He further says that he knew the person served as aforesaid to be the person mentioned and described in said summons and complaint as one of the defendants in this action.

(Signed) EDWARD O. KANNOFSKY.

Sworn to before me this 16th day of February 1904.

(Signed) WILLIAM D. MAKEPEACE,

[SEAL.] *Notary Public, New York Co.*

7 Circuit Court of the United States for the Southern District of New York.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff,

against

MAYER S. BERNHEIMER and LORIN S. BERNHEIMER, as Surviving Executors of the Last Will and Testament of Simon Bernheimer, Deceased, Defendants.

The above named plaintiff, by Wilson & Wallis, his attorneys, complains of the above named defendants, and alleges:

1. That on or about the 26th day of November, A. D. 1884, the Minnesota Thresher Manufacturing Company was duly incorporated in said State of Minnesota, under and pursuant to the provisions of the constitution and laws of said State; that ever since said date said corporation has continued to be and now is a body corporate, organized, created and existing under and by virtue of the constitution and the laws of said State; and that said corporation is, and at all times has been, a citizen and resident of the State of Min-

nesota. On information and belief, that the said defendants are the only surviving executors of the last will and testament of Simon Bernheimer, deceased, who was in his lifetime and at the time of his death a stockholder of said the Minnesota Thresher Manufacturing Company, as hereinafter stated; that said Simon Bernheimer died leaving such last will and testament, which was duly proved and admitted to probate by the Surrogate of the County of New York, State of New York, having jurisdiction of the same, and letters testamentary were thereupon, and prior to the beginning of this action, duly issued to Jacob S. Bernheimer, who died on or about the 27th day of April, 1902, and to Mayer S. Bernheimer and Lorin S. Bernheimer, the said defendants, who duly qualified thereunder and still remain such executors; that on the 16th day of August,

8 1901, the plaintiff was and still is a citizen and resident of the State of Minnesota; that the defendants are citizens of the State of New York and residents of the City of New York, in the Southern District of New York; that the matter in controversy in this action exceeds, exclusive of interest and costs, the sum of Two thousand Dollars.

2. That the articles of incorporation of said Minnesota Thresher Manufacturing Company (hereinafter called the Thresher Company) provided that the objects for which said corporation was formed was the purchase of the capital stock, evidences of indebtedness issued by and the assets of the Northwestern Manufacturing and Car Company, a corporation existing under the laws of the State of Minnesota, or any portion of said capital stock, evidences of indebtedness or assets, and the manufacture and sale of steam engines, and all kinds of farm implements, machinery of all kinds, and the manufacture and sale of all articles, implements and machinery, of which wood and iron, or either of them, form the principal component parts, and the manufacture of materials therein used, with a principal place of business at the city of St. Paul, in the County of Ramsay, in said State of Minnesota, which afterwards, by amendment to said articles of incorporation, duly made, was changed to the city of Stillwater, in the County of Washington, in said State of Minnesota; that after its incorporation as aforesaid said Thresher Company engaged in and carried on at said St. Paul and at said Stillwater all the classes of business authorized by said articles of incorporation; that said articles of incorporation have never been in any way altered, amended or modified, except as aforesaid.

3. That the Merchants' National Bank of St. Paul, Minnesota, is and during all the times hereinafter stated has been, a banking corporation organized and existing under the laws of the United States of America, having its place of business at the city of St. Paul, in the State of Minnesota; that on the 6th day of May, A. D.

9 1901, the said Thresher Company was indebted to said Merchants' National Bank of St. Paul, Minnesota, in the sum of Two thousand nine hundred and thirty-six dollars and seven cents ($2,936.07); that prior thereto an action had been duly commenced in the District Court for Ramsay County, Minnesota, in which the said bank was the plaintiff and said Thresher Company

was the defendant, of which said cause said court, which was a court of general jurisdiction and of record, had acquired jurisdiction of both of the parties and of the subject matter thereof, and on the 6th day of May, 1901, judgment was duly entered and docketed in said court in favor of said Merchants' National Bank of St. Paul, Minnesota, said plaintiff, and against said Thresher Company, for Two thousand nine hundred and thirty six dollars and seven cents ($2936.07), which said judgment has never, either in whole or in part, been paid or satisfied. That thereafter an execution, directed to the Sheriff of said Ramsay County, was duly issued and delivered to said Sheriff, who made return thereon that, after diligent search and inquiry, he was unable to find any property of said Thresher Company in his said county, and hence returned said execution wholly unsatisfied; that a certain other execution was duly issued out of said Court upon said judgment, directed to the Sheriff of said Washington County, and that said Sheriff duly returned that, after diligent search and inquiry, he was unable to find any property of said defendant in his said county, and hence returned said execution wholly unsatisfied.

4. That at the time said judgment was entered and said execution was issued and returned as aforesaid, and for a long time prior thereto, and at all times thereafter, said Thresher Company was, and it now is, wholly insolvent and without any assets or property whatsoever, other than the liability of its stockholders as hereinafter set forth.

10 5. The after the return of said executions as aforesaid, and on or about the 16th day of August, 1901, said Merchants' National Bank, as a judgment creditor of said Thresher Company, duly instituted and commenced in the District Court for the said County of Washington and State of Minnesota, which said court was then and there a court of record and of general jurisdiction, an action against said Thresher Company under and pursuant to the provisions of Chapter 76 of the General Statutes of the State of Minnesota, and the acts amendatory thereof and supplementary thereto, for the sequestration of the stock, property, things in action and effects of the said Thresher Company, and for the appointment of a receiver for the same; that said Thresher Company was duly and personally served with summons and process in said action, and on or about the 16th day of August, 1901, duly appeared in said action by its duly authorized attorney.

6. That on the said 16th day of August, 1901, judgment was duly given, rendered and entered in and by said court in said action, adjudging that the stock, property, things in action and effects of said Thresher Company be sequestered, and that a receiver therefor be appointed; that such judgment has never been appealed from nor in any manner modified, reversed, or set aside.

7. That on the 16th day of August, 1901, such proceedings were duly had that this plaintiff, Theodore R. Converse, was by said District Court for Washington County, Minnesota, in said cause, duly appointed receiver of all the property, assets, rights and interests of said Thresher Company of every sort or nature, either in law or in

equity, and with full authority and direction to sue for, collect, recover, compromise or settle any and all stockholders' liability that may exist under the constitution and laws of the State of Minnesota, or otherwise, and to prosecute and sue for the amount of such liability, or any assessment that might be made by said court
11 on account thereof for the satisfaction of the claims of the creditors of said Thresher Company, and all expenses of administration of said trust, including fees, allowances, expenses of said receiver and his counsel, and with full power and authority to sue for and enforce the collection of any assessment or stockholders' liability, either in the courts of the State of Minnesota or the courts of any other State or Territory, or the courts of the United States sitting in any State or Territory of the United States, and with full power and authority to prosecute appeals or sue out writs of error in any such suits or cases that may be so instituted by said receiver for the collection of such assessments or stockholders' liability, and in general to do and perform all acts that in the opinion of said receiver, or that he might be advised, were needful or proper for the enforcement and collection of such assessments and stockholders' liability in any of the courts of the United States, or the various States and Territories of the United States; and said receiver was further directed to seize and take into his possession, sue for and recover any and all property of every sort and nature possessed by said corporation.

8. That the plaintiff duly gave the bond required of him as such receiver, by said order, which bond was duly approved by one of the judges of said court and duly filed in said action; and that the plaintiff duly qualified as such receiver and entered upon the performance of his duties as such receiver, and ever since has acted, and now is acting, as such.

9. That thereafter, according to and in pursuance of the laws of the State of Minnesota, such proceedings were had in said last mentioned action, that an order of said District Court of said Washington County was made and entered therein on the 3rd day of
12 September, 1901, authorizing and requiring the creditors of said Thresher Company to become parties to said action, and to appear and exhibit therein their claims against said Thresher Company in the manner prescribed, and within the time specified in said order, to wit, on or before six months from and after the first publication thereof. That immediately after the entry of said order, the said order was duly published as required therein, and that within the time therein limited, and in the manner therein prescribed, certain creditors of said Thresher Company duly became parties to said action as intervenors therein, and duly exhibited therein their claims and demands against said Thresher Company, and proved the same, and after hearing duly had in said action, said claims of such creditors were duly allowed to the amount of Four hundred and forty three thousand seven hundred and fifty two dollars and seventeen cents ($443,752.17), which is the entire amount of the indebtedness of said corporation, so far as this plaintiff has been informed and as he verily believes.

10. That at the time of the organization and incorporation of said Thresher Company, and at all times thereafter, during its corporate existence, and at the time when, and at all times since, the said Simon Bernheimer, said defendants' said testator, became a stockholder in said Thresher Company, as hereinafter alleged, it was provided in and by the constitution and general laws of the State of Minnesota, pursuant to which said corporation was organized and incorporated, that each and every stockholder of said corporation severally agreed to assume and did assume liability for the indebtedness of said corporation in case of deficiency or insufficiency of corportate assets to liquidate such indebtedness, to the amount of the par value of his stock; and further agreed, in case of such deficiency, to pay and contribute for the equal benefit of the creditors of such corporation such amount, not exceeding the par value of the
13 stock held by such stockholder, as might be required to make up such deficiency. That under said constitution and general laws, and the decisions of the Supreme Court of the State of Minnesota construing and interpreting the same, said agreement and undertaking on the part of the stockholders is contractual and transitory, and runs to and is enforceable for the corporate creditors by the receiver of the corporation, and that the same is enforceable by such receiver in any jurisdiction whereof jurisdiction of stockholders may be obtained; and that said contract and agreement, on the part of the stockholders, grows out of and follows the subscription to or acquisition of the corporate stock wherein and whereby each stockholder guarantees the payment of all corporation indebtedness contracted, created or existing while such stock is held by him, and to the amount of his stock as aforesaid. And the said defendants' said testator, said Simon Bernheimer, when he accepted the stock of said corporation now owned and held by the defendants as hereinafter set forth, accepted the said provisions of the laws of Minnesota in relation thereto, and agreed to assume and pay the indebtedness of said corporation to the extent of the par value of the stock owned or held by him therein, or so much thereof as might be necessary for the payment of such indebtedness. And under the laws of Minnesota, the liability of said Simon Bernheimer, said defendants' said testator, upon his agreement aforesaid was and is an asset of said corporation.

11. That on the 16th day of August, 1901, and for a long time prior thereto, and while the provisions of the constitution and laws of the State of Minnesota as aforesaid remained in full force and effect, the above-named Simon Bernheimer, said defendants' said testator, was the lawful owner and holder, and had duly and lawfully acquired, subject to the liability and agreement aforesaid,
14 Two hundred (200) shares of the capital stock of said Thresher Company of the aggregate par value of $10,000, and that the said shares of stock were duly and lawfully issued to, and received and accepted by said Simon Bernheimer, said defendants' said testator; that said Simon Bernheimer, said defendants' said testator has never parted with or transferred any portion of said stock, but has at all times since the issue thereof to him as

aforesaid, continued to be and now is the owner and holder of the same, and of all thereof, subject only to the devolution of his title therein and his liability thereon upon said defendants as the executors of his last will and testament, and so appears by the books and records of said Thresher Company. And that said defendants, as such executors, are now vested with the title of said shares of stock, and as the personal representatives of said testator and of his estate are subject to, and hold the estate of said testator, subject to the liability and agreement aforesaid.

12. That at the time said Simon Bernheimer, said defendants' said testator, so became the owner and holder of said shares of the capital stock of said Thresher Company, the provisions of the constitution and laws of the State of Minnesota hereinbefore set forth, were in full force and effect, and became a part of said Simon Bernheimer's, said defendants' said testator, contract of purchase and ownership of said shares of stock; and said Simon Bernheimer, said defendants' said testator, in and by the purchase and ownership and holding of said shares of said stock of said Thresher Company as aforesaid, duly contracted and agreed for a valuable consideration that he would be and remain responsible with the other stockholders of said company for all contracts, debts and engagements of said company while he remained such stockholder, to the amount of his stock therein, at the par value thereof, to wit, to the amount of $10,000.

13. That it is provided by the laws of the State of Minnesota, as follows:

15 *General Laws of Minnesota for* 1899.

CHAPTER 272.

An Act to Provide for the Better Enforcement of the Liability of Stockholders of Corporations.

SECTION 1. Whenever any corporation created or existing by or under the laws of the State of Minnesota, whose stockholders or any of them, are liable to it or to its creditors, or for the benefit of its creditors, upon or on account of any liability for or upon or growing out of, or in respect to the stock or shares at any time held or owned by such stockholders, respectively, whether under or by virtue of the constitution and laws of said State of Minnesota, or any statute of said State, or otherwise, has heretofore made or shall hereafter make an assignment for the benefit of its creditors under the insolvency laws of this State; or whenever a receiver for any such corporation has heretofore been or shall hereafter be appointed by any District Court of this State, whether under or pursuant to any of the provisions of Chapter seventy-six (76) of the General Statutes of eighteen hundred and ninety-four (1894) of Minnesota, and the acts amendatory thereof, or under or pursuant to any other statute of this State, or under the general equity powers and practice of such court; the District Court appointing such receiver, or having juris-

diction of the matter of said assignment, may proceed as in this act provided.

SECT. 2. Upon the petition of the assignee or receiver of any such corporation, or of any creditor of such corporation who has filed his claim in such assignment or receivership proceedings, the said District Court shall, by order, appoint a time for hearing not less than thirty (30) nor more than sixty (60) days from the time of filing said petition with the Clerk of said Court, and shall direct such notice of such hearing to be given by the parties presenting said petition, by publication or otherwise, as the Court, in its discretion, may deem proper; but if said petition be filed by a creditor,
16 other than the assignee or receiver of said corporation, the Court shall direct that notice of such hearing be personally served on such assignees or receiver.

SECT. 3. At such hearing the Court shall consider such proofs, by affidavit or otherwise, as may then be offered by the assignee or receiver, or by any creditor or officer or stockholder of said corporation who may appear in person or by attorney, as to the probable indebtedness of said corporation, and the expenses of said assignment or receiver-hip, and the probable amount of assets available for the payment of such indebtedness and expenses; and also as to what parties are or may be liable as stockholders of said corporation, and the nature and extent of such liability. And if it appear to the satisfaction of the Court that the ordinary assets of said corporation, or such amount as may be realized therefrom within a reasonable time, will probably be insufficient to pay and discharge in full and without delay, its indebtedness, and the expenses of such assignment or receiver-hip, and that it is necessary or proper that resort be had to such liability of its stockholders, the said Court shall thereupon, by order, direct and levy a ratable assessment upon all parties liable as stockholders, or upon or on account of any stock or shares of said corporation, for such amount, proportion or percentage of the liability upon or on account of each share of said stock as the Court, in its discretion, may deem proper (taking into account the probable solvency or insolvency of stockholders, and the probable expenses of collecting the assessment); and shall direct the payment of the amount so assessed against each share of said stock to the assignee or receiver within such time thereafter as said court may specify in said order.

SECT. 4. Said order shall direct the assignee or receiver to proceed to collect the amount so assessed against each share of said stock from the parties liable therefor; and shall direct and author-
17 ize said assignee or receiver, in case of the failure of any party liable upon or on account of any share or shares of said stock to so pay the amount so assessed against the same within the time specified in said order, to prosecute actions against each and every such party so failing to pay the same, wherever such party may be found, whether in this State or elsewhere.

SECT. 5. Said order and the assessment thereby levied shall be conclusive upon and against all parties liable upon or on account of any stock or shares of said corporation, whether appearing or repre-

sented at said hearing or having notice thereof or not, as to all matters relating to the amount of and the propriety of and necessity for the said assessment. This provision shall also apply to any subsequent assessment levied by said court as hereinafter provided.

SECT. 6. It shall be the duty of such assignee or receiver to, and he may, immediately after the expiration of the time specified in said order for the payment of the amount so assessed by the parties liable therefor, institute and maintain an action or actions against any and every party liable upon or on account of any share or shares of such stock who has failed to pay the amount so assessed against the same, for the amount for which such party is so liable. Said actions may be maintained against each stockholder, severally, in this State or in any other State or country where such stockholder, or any property subject to attachment, garnishment or other process in an action against such stockholder, may be found. But if said assignee or receiver shall in good faith believe any stockholder so liable to be insolvent, or that the expense of prosecuting such action against such stockholder will be so great that it will be of disadvantage to the estate and the interest of creditors to prosecute the same, said assignee or receiver shall so report to said court;
18 and shall not be required to institute or prosecute any such action unless specifically directed so to do by said court. And in such case said court shall not require said receiver to institute or maintain such action unless said court shall have reasonable cause to believe that the result of such action will be of advantage to the estate and creditors of said corporation; except as hereinafter provided.

14. That this plaintiff, by virtue of the laws of the State of Minnesota, and his appointment as such receiver, became and was and is the representative of all the stockholders and creditors of said insolvent corporation, is invested with the title to all the rights of action possessed by said corporation, including the aforesaid liability of its stockholders, and is authorized to maintain such actions as are necessary to recover the assets thereof, included among which is the liability of said Simon Bernheimer, and of said defendants as such executors of his last will and testament, hereinbefore set forth.

15. That on the 16th day of April, 1902, the plaintiff, as such receiver, duly made and caused to be filed with and presented to said District Court of said Washington County, according to law, a petition by the plaintiff as such receiver, praying, among other things, that said Court might, by order of judgment in said action, direct and levy a ratable assessment upon the parties liable as stockholders of said Thresher Company, for such amount, proportion, or percentage of the liability for debt on account of each share of said stock, as said Court should deem proper after hearing, as by law provided, pursuant to the provisions of Chapter 272 of the General Laws of Minnesota for the year 1899 (An Act entitled "An Act to provide for the better enforcement of the liability of stockholders of corporations"), as hereinbefore set forth, and praying that said Court by order appoint a time for hearing such petition and application, and

direct such notice thereof to be given as said Court should deem proper.

19 16. That on said 16th day of April, 1902, said Court duly made and entered its order in said last mentioned action in pursuance to the provisions of said Chapter 272 of the Laws of 1899; that notice of said order was duly given in the manner prescribed by said order, notice of said order being duly published and served or mailed as therein directed; and that a copy of said order was duly mailed to the defendant herein more than twenty days prior to the date of hearing specified therein. That said matter, having been duly adjourned from time to time, and having duly come on for final hearing on the 10th day of December, 1902, at which time evidence was introduced by the receiver and by certain objecting stockholders in said Thresher Company, and the said matter having been orally argued to said Court by counsel on behalf of said stockholders and by counsel on behalf of this plaintiff, thereafter, and on the 22nd day of December, 1902, said Court duly made and entered its order or decree in said action, a true copy of which said order or decree is hereto annexed, marked "Exhibit A," and hereby referred to and made a part hereof as fully as if set up at length herein; that said last mentioned order or decree has never been in any manner reversed, modified or set aside.

17. That said Court, in and by said order or decree, adjudged that an assessment of thirty-six (36) per cent. of the par value of each share of the capital stock of said Thresher Company, to wit, the sum of Eighteen dollars ($18.00) on each share thereof be and the same was thereby assessed upon and against each and every share of said capital stock, and upon and against the person, corporation or party liable as a stockholder of said Thresher Company for, upon or on account of said shares of stock, and that each and every person, corporation or party liable as such stockholder of

20 said Thresher Company pay, and was thereby directed to pay to this plaintiff, as receiver of said Thresher Company, at his office in the city of Stillwater, County of Washington and said State of Minnesota, within thirty days after the date of said order, the said sum of Eighteen dollars (18.00) for and on account of each and every share of said stock for or upon which said person, corporation or party was liable as a stockholder of said Thresher Company as aforesaid, and that in and by said order or decree this plaintiff, as such receiver, was ordered to give due notice of such order or decree by mailing a copy of the same within ten days from the date thereof to each stockholder and to the personal representatives of each stockholder of said Thresher Company whose name and address was known to said receiver. That the amount so aforesaid adjudged and assessed against the stockholders of said corporation, was a just and proper amount for the payment of its indebtedness and the other charges which, by the laws of Minnesota, this plaintiff was required to pay, and was and is necessary for that purpose.

18. That notice of said last mentioned order of said District Court of said Washington County was duly given by this plaintiff as such

receiver, as prescribed by said order, and in the manner directed thereby.

19. That certain stockholders of said Thresher Company who duly intervened in said last mentioned action, and objected to the issuance of said last mentioned order or decree and the levy of any assessment, duly prosecuted an appeal from said last mentioned order or decree to the Supreme Court of said State of Minnesota; that said appeal was duly heard and considered by said Supreme Court; and that at the April Term, A. D. 1903, of said Court, judgment was rendered and entered in said matter in and by said Supreme Court, determining and adjudging that the said order or decree so appealed from be in all things affirmed.

21 20. That the plaintiff gave notice of the decision and judgment of said Supreme Court in the matter of said order or decree by mailing a copy of said order and of the opinion of said Supreme Court to each stockholder of said Thresher Company whose name and address was known to the plaintiff.

21. That in and by the authority of said last mentioned order or decree and of the constitution and laws of the State of Minnesota and of the United States, there is due and owing from defendants to the plaintiff, as such receiver, the sum of Three thousand six hundred Dollars, and interest thereon at the rate provided by the laws of the said State of Minnesota, to wit, at the rate of six (6%) per cent. per annum from the 21st day of January, 1903; that more than thirty days have elapsed since the date of said order, and that the plaintiff, as such receiver, has duly demanded of the defendants payment of the amount due from said Simon Bernheimer, as such stockholder of said Thresher Company, under and pursuant to said order; that the defendants have failed and refused to pay the same or any part thereof, and that no part thereof has been paid.

Wherefore the plaintiff, as such receiver, demands judgment against the defendants, as such executors of the last will and testament of said Simon Bernheimer, for the sum of Three thousand six hundred Dollars, and interest thereon at the rate of six (6%) per cent. per annum, from the 21st day of January, 1903, and for the costs and disbursements of this action.

WILSON & WALLIS,
Plaintiff's Attorneys.

Office and Post Office Address, 48 Wall Street, New York, Borough of Manhattan.

22 STATE OF MINNESOTA, *County of Ramsey, ss:*

Theodore R. Converse, being duly sworn, deposes and says that he is the plaintiff in the above entitled action; that the foregoing complaint is true to his own knowledge, except as to matters therein stated to be alleged upon information and belief; and as to those matters he believes it to be true.

THEODORE R. CONVERSE.

Sworn to before me this 2nd day of Jan'y, 1904.

[SEAL.] C. W. G. WITHEE,
Notary Public, Ramsey Co., Minn.

STATE OF MINNESOTA, *County of Ramsey, ss:*

I, Edward G. Rogers, Clerk of the District Court in and for the County of Ramsey, in the State of Minnesota, the same being a Court of Record of the aforesaid County, having by law a seal, do hereby certify that C. W. G. Withee by whom the foregoing affidavit was taken, and whose name is subscribed thereto, was at the time of taking the same a notary public residing in said County, duly commissioned and sworn and authorized by the laws of said State to take the proof or acknowledgment of deeds or conveyances of lands, tenements and hereditaments in said State, and other instruments in writing to be recorded in said State, and to administer oaths or affirmations in said County, and that I am well acquainted with his handwriting and verily believe that the signature to the foregoing certificate is genuine.

In witness whereof, I have hereunto set my hand and affixed my official seal, which is the seal of said Court, this 2nd day of January, 1904.

[SEAL.] EDWARD G. ROGERS, *Clerk.*

23 "EXHIBIT A."

STATE OF MINNESOTA, *County of Washington:*

District Court, First Judicial District.

MERCHANTS' NATIONAL BANK OF ST. PAUL, MINN. (a Corporation),
Plaintiff,
v.
MINNESOTA THRESHER MANUFACTURING COMPANY (a Corporation),
Defendant.

Order.

This matter having come on to be heard at a special term of this court held at the Court House in the city of Stillwater, in said county and State, on Tuesday the 10th day of June, 1902, at ten o'clock in the forenoon, pursuant to an order made and entered herein on the 16th day of April, 1902, upon the petition of Theodore R. Converse, Receiver of said defendant corporation, which petition was duly filed with the Clerk of this court, praying among other things that this court might, by order herein, direct and levy a ratable assessment upon the parties liable as stockholders of said defendant corporation, for such amount, proportion or percentage of the liability, for or on account of each share of said stock, as the court should deem proper after hearing as by law provided, pursuant to the provisions of Chapter 272 of the General Laws of Minnesota

for the year 1899; and said Receiver having duly appeared at said special term of court on the said 10th day of June, 1902, in support of the said petition of said Receiver, by Messrs. Davis, Kellogg & Severance, his attorneys; and Messrs. Koon, Wheelan and Bennett, Charles P. Searle, and J. H. Benton, Jr., having appeared in opposition thereto on behalf of the following named stockholders of said defendant, to wit:

D. N. Morgan, of Bridgeport, Conn.; George E. Carter, of Boston, Mass.; Dime Savings Bank, of Norwich, Conn.; Bingham National Bank, of Bingham, Mass.; Mechanics National Bank of
24 Worcester, Mass.; Great Falls National Bank of Great Falls, N. H.; Naumkeag National Bank, of Salem, Mass.; Home National Bank of Brockton, Mass.; and Second National Bank of Bangor, Maine; and said counsel for objecting stockholders having filed a written objection and answer to the said petition, to which a reply was duly filed by the counsel for said Receiver; and it appearing to the satisfaction of the court that copies of said order dated April 16th, 1902, were duly published, mailed and served in the manner therein prescribed, and that due notice of said hearing was duly given by said Receiver to the defendant and to each stockholder of record of the defendant, as directed by said order; and the said matter having been adjourned from time to time, and having duly come on for final hearing on Wednesday, the 10th day of December, 1902, at which time evidence was introduced by the Receiver and by said objecting stockholders, and the said matter having been orally argued to the court by M. B. Koon, Esq., one of the counsel for said objecting stockholders, on behalf of said stockholders, and by C. A. Severance, Esq., one of the attorneys for said Receiver on behalf of said Receiver; and it appearing to the satisfaction of the court, after hearing and considering the proofs and evidence introduced at said hearing by and in behalf of said parties respectively, and the arguments of counsel, that it is necessary and proper that an assessment of Eighteen dollars ($18.00) on each share of capital stock of said corporation be directed and levied herein against all parties liable as stockholders of said defendant.

Now therefore, it is ordered: That an assessment of thirty six per cent. (36%) of the par value of each share of the capital stock of said defendant, to wit: the sum of eighteen dollars ($18.00) on each share thereof, be, and the same is hereby assessed upon and against each and every share of said capital stock, and upon
25 and against the person, corporation or party liable as a stockholder of defendant for, upon or on account of such shares of stock, and that each and every person, corporation or party liable as such stockholder of said defendant be, and he is hereby directed to pay to Theodore R. Converse, Receiver of said defendant, at his office in the city of Stillwater, County of Washington and said State of Minnesota, within thirty (30) days after the date of this order, the said sum of Eighteen dollars ($18.00) for and on account of each and every share of said stock for or upon which said person, cor-

poration or party is liable as a stockholder of said defendant as aforesaid.

Ordered further: That said Receiver forthwith proceed to collect the several amounts due from the several persons, corporations and parties liable as stockholders of said defendant under the terms of this order, and hold the amount thus collected subject to the further order of this court herein.

Ordered further: That in case any person, corporation or party liable as a stockholder of said defendant shall fail to pay the amount hereby assessed against the share or shares of stock held or owned by such stockholder, or upon or on account of which he or it may be liable, within the time hereinbefore specified, said Receiver is hereby directed and authorized to forthwith institute and prosecute such action or actions or other proceedings against such person, persons, corporation or party liable in any court having jurisdiction, whether in this State or elsewhere, which said Receiver may deem necessary or proper for the recovery of the amount due from such person, persons, corporation or party under the terms of this order.

Ordered further: That said Receiver give due notice of this order by mailing a copy of the same within ten days from the date hereof, to each stockholder of said defendant whose name and address is known to said Receiver.

By the Court—

W. C. WILLISTON,
District Judge.

Dated December 22d, 1902.

26 570.—*Notice of Appearance.*

United States Circuit Court, Southern District of New York.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company,

against

MAYER S. BERNHEIMER and LORIN S. BERNHEIMER, as Surviving Executors of the Last Will and Testament of Simon Bernheimer, Deceased.

Notice of Appearance.

SIR: Please to take Notice, That the defendants Mayer S. Bernheimer and Lorin S. Bernheimer, as surviving executors of the last will and testament of Simon Bernheimer, deceased, appear in this action, and that we are retained as Attorneys for them therein, and demand that a copy of all papers in this action be served on us at our office, number 25 Broad Street, Borough of Manhattan, New York City.

New York, Feb. 9, 1904.

Yours, &c.,

JACOB & TANZER,
Attorneys for Defendants.

Office and Post Office Address: 25 Broad St., Manhattan, New York City.

To Wilson & Wallis, Esqs., Plaintiffs Attorneys, 48 Wall St., Manhattan, New York City.

[Endorsed:] United States Circuit Court, Southern District of New York. Theodore R. Converse, as Receiver, &c., *against* Mayer S. Bernheimer & ano., as surviving Executors, &c. Orig. Notice of Appearance. Jacob & Tanzer, Attorneys for Defendants. Due service of a notice, of which the within is a copy, admitted this 9th day of February 1904. Wilson & Willis, Plaintiffs' Attorneys.

27 Circuit Court of the United States for the Southern District of New York.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff,

against

MAYER S. BERNHEIMER and LORIN S. BERNHEIMER as Surviving Executors of the Last Will and Testament of Simon Bernheimer, Deceased, Defendants.

The defendants above named for their amended answer to the complaint in this action allege as follows:

I. These defendants admit that they are the only surviving executors of the last will and testament of Simon Bernheimer; that said Simon Bernheimer died leaving his will and testament which was duly proved and admitted to probate by the Surrogate of the County of New York, State of New York, having jurisdiction of the same, that letters testamentary were thereupon and prior to the beginning of this action, duly issued to Jacob S. Bernheimer who died on or about the 27th day of April, 1902, and to these defendants, who duly qualified thereunder and still remain such executors; that the defendants are citizens of the State of New York and residents of the City of New York in the Southern District of New York; that the said Simon Bernheimer was at the time of his death the holder of two hundred shares of the Capital Stock of the Minnesota Thresher Manufacturing Company; and that no part of the sum claimed in the complaint to be due has been paid.

II. These defendants have no knowledge or information sufficient to form a belief as to the truth of any of the allegations in the said complaint contained, other than those expressly admitted
28 and therefore they deny the same.

Further answering the said complaint herein:

III. These defendants allege and claim that Chapter 272 of the General Laws of Minnesota for 1899, set forth in the complaint, and all the provisions thereof, and all proceedings thereunder, in so far as it was or is sought thereby to affect any alleged liability arising from or out of the ownership of stock acquired by the said Simon Bernheimer before the enactment of the said act, or by reason of ownership by said Simon Bernheimer of stock in any corporation organized before the enactment of said act, or by reason of debts contracted before the enactment of said act were and are in violation of the provisions of Section ten of Article one, of the Constitu-

tion of the United States, that no State shall pass any law impairing the obligation of contracts, and therefore void and of no effect.

IV. These defendants allege and claim that the said provisions of Chapter 272 of the General Laws of Minnesota for 1899, and all proceedings had thereunder, so far as it is sought thereby to charge with liability or to affect these defendants who were not parties to the said proceedings, nor heard therein, nor served with process therein, and in so far as it is sought to take the property of the defendants in the amount and for the purposes mentioned in the said complaint, were and are in violation of the provisions of Section one of Article fourteen of the Amendments to the Constitution of the United States, that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction, the equal protection of the laws.

29 Further answering the said complaint and for a separate defense, these defendants allege:

V. That the said Minnesota Thresher Manufacturing Company was and is a corporation organized for the purpose of carrying on a manufacturing business exclusively, and was at all times engaged in carrying on a manufacturing business exclusively.

Further answering the said complaint and for a separate and second defense to the cause of action alleged in the complaint, the defendants allege:

VI. Upon information and belief, that the cause of action alleged in the complaint, and each of the causes of action against the Minnesota Thresher Manufacturing Company, to satisfy which the assessment on the shareholders of said Company was assumed to be levied, as set forth in the complaint, arose in the State of Minnesota and originally accrued in favor of a non-resident of the State of New York, and that each and every of said causes of action mentioned in this paragraph did not accrue within six years before the commencement of this action.

VII. And the defendants further allege on information and belief, that the plaintiff is, and was at all the times mentioned in the complaint, a non-resident of the State of New York, and that the Minnesota Thresher Manufacturing Company is, and was at all said times a foreign corporation and a non-resident of the State of New York, and that the owners of the causes of action against the Minnesota Thresher Manufacturing Company, to pay whose claims the assessment mentioned in the complaint was assumed to be levied, each are, and at all said times were, non-residents of the State of New York.

For a third and separate defense to the cause of action alleged in the complaint, the defendants allege:

30 VIII. On information and belief, that the cause of action alleged in the complaint, and each of the causes of action against the Minnesota Thresher Manufacturing Company, to satisfy which the assessment on the shareholders of the Company was assumed to be levied, as set forth in the complaint, were each founded upon a debt of the said Company not payable within two years from

the time it was contracted, and that an action against the Company was not commenced thereon within two years after the date the same became due and execution issued thereon and returned unsatisfied in whole or in part.

For a fourth and separate defense to the cause of action alleged in the complaint, the defendants allege:

IX. On information and belief, that the causes of action alleged in the complaint and each of the causes of action against the Minnesota Thresher Manufacturing Company to satisfy which the assessment on the shareholders of the Company was assumed to be levied as set forth in the complaint, did not accrue within six years before the commencement of this action, and each of said causes of action did not accrue within six years before the commencement of the action or proceeding in or by which the said assessment was so assumed to be levied.

For a fifth and a separate defense to the cause of action alleged in the complaint; the defendants, repeating and realleging the allegations of the third separate defense, allege:

X. On information and belief, that said Simon Bernheimer, deceased, and these defendants, as his executors ceased to be stockholders upon the sequestration of the stock, property, things in action and effects of said corporation and the appointment of a receiver of the same, as set forth in the complaint, to wit, on or
31 about the 16th day of August, 1901. That ever since said time the plaintiff has been the permanent receiver of the said stock, property, things in action and effects of the said corporation, and vested with the exclusive control thereof; that no officers, agents or employees of said corporation have been elected or appointed and the transfer of shares of stock thereof has not been permitted or been possible; that no business has been carried on or corporate act performed by said corporation; and that said corporation has had no assets except the liability, if any, of its shareholders. That the defendants are advised and believe that the said adjudication of sequestration and the appointment of the said receiver amounted under the law, both of the State of New York and of the State of Minnesota to a dissolution of the said corporation. That from the time when said Simon Bernheimer, deceased, or these defendants as his executors ceased to be stockholders in said Company, more than two years had elapsed before the commencement of this action.

For a sixth and separate defense to the cause of action alleged in the complaint, the defendants allege:

XI. That the said Simon Bernheimer died on or about the 26th day of April, 1900, leaving property in the State of Minnesota, and leaving a Last Will and Testament which was duly admitted to probate in the Probate Court of the County of Ramsey and State of Minnesota having jurisdiction of the same, on or about the 7th day of September, 1900, and letters testamentary were thereupon duly issued to the executors named therein who qualified. That thereafter and on the 7th day of September, 1900, an order was duly made by the said Court allowing six months from and after
32 the date of the said order, in which all persons having claims or demands against the said Simon Bernheimer were re-

quired to file the same in the said Probate Court for examination and allowance or be forever barred; and appointing the first Monday in April, 1901, at ten o'clock A. M. at a General Term of said Probate Court, to be held at the Court House in the City of St. Paul in said County, as the time and place when and where the said Probate Court would examine and adjust said claims and demands, and directing that notice of such hearing be given to all creditors and persons interested in said estate by forthwith publishing the said order once in each week for three successive weeks in the St. Paul Dispatch, a daily newspaper printed and published in said County. That the said order was published at the times and in the manner in said order directed.

XII. That no claim or demand upon the cause of action alleged in the complaint or upon any of the causes of action against the Minnesota Thresher Manufacturing Company to satisfy which, the assessment on the shareholders of said company is assumed to be levied as set forth in the complaint, nor any claim upon any liability of the said Simon Bernheimer as a stockholder of the said Minnesota Thresher Manufacturing Company was presented within the time fixed in the said order or at any time to the said Probate Court or to any Probate Court, or to these defendants or to any of them.

XIII. That the cause of action alleged in the complaint and each of the causes of action against the Minnesota Thresher Manufacturing Company to satisfy which the assessment on the shareholders of said company was assumed to be levied as set forth in the complaint arose in the State of Minnesota and originally accrued in
33 favor of a non-resident of the State of New York; that the plaintiff is and was at all the times mentioned in the complaint a non-resident of the State of New York and a resident of the State of Minnesota; and that the Minnesota Thresher Manufacturing Company is and was at all of said times a foreign corporation and a non-resident of the State of New York, and a resident of the State of Minnesota; and upon information and belief that each of the owners of the causes of action against the Minnesota Thresher Manufacturing Company to pay whose claims the assessment mentioned in the complaint was assumed to be levied are and at all of said times were non-residents of the State of New York, and residents of the State of Minnesota.

Wherefore, the defendants demand judgment dismissing the complaint with costs.

JACOB & TANZER,
Attorneys for Defendants.

Office & P. O. Address, 25 Broad Street, Borough of Manhattan, New York City.

STATE OF NEW YORK, *County of New York*, ss:

Lorin S. Bernheimer, being duly sworn, deposes and says: that he is one of the defendants in this action; that he has read the foregoing answer and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to

be alleged on information and belief, and as to those matters he believes it to be true.

LORIN S. BERNHEIMER.

Sworn to before me this 18th day of November, 1904.

SIGMUND WICHSLER,
Notary Public No. 36, N. Y. Co.

34 At a stated Term of the Circuit Court of the United States, held in and for the Southern District of New York, at the Court Room, thereof, in the Post Office Building in the Borough of Manhattan, City, County and State of New York, on the 3rd day of November, 1905.

Present: Hon. E. Henry Lacombe, Justice.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff,

against

MAYER S. BERNHEIMER and LORIN S. BERNHEIMER, as Surviving Executors of the Last Will and Testament of Simon Bernheimer, Deceased, Defendants.

On reading and filing the annexed consent and on motion of Liebmann, Naumburg & Tanzer, Esqrs. attorneys at law, it is

Ordered that Liebmann, Naumburg & Tanzer, be, and they are hereby substituted in the place and stead of Jacob & Tanzer, as attorneys for the defendants in the above entitled action.

Enter,

E. H. LACOMBE,
J. U. S. C. C.

35 Circuit Court of the United States, for the Southern District of New York.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff,

against

MAYER S. BERNHEIMER and LORIN S. BERNHEIMER, as Surviving Executors of the Last Will and Testament of Simon Bernheimer, Deceased, Defendants.

It is hereby consented that Liebmann, Naumburg & Tanzer, Esqrs. attorneys and counsellors at law be substituted in the place and stead of the firm of Jacob & Tanzer Esqrs. as attorneys for the defendants in the above entitled action.

Dated September 27th 1905.

MAYER S. BERNHEIMER.
LORIN S. BERNHEIMER.

STATE OF NEW YORK, *County of New York, ss:*

On the 27th day of Sept. 1905 before me came and appeared Mayer S. Bernheimer & Lorin S. Bernheimer to me known and known to me to be the persons mentioned in and who executed the foregoing consent and they thereupon duly acknowledged to me that they executed the same.

NATHAN APPLEBAUM,
Commr. of Deeds, N. Y. City.

36 (Endorsed:) Circuit Court of the U. S., Southern District of N. Y.—Theodore R. Converse, as Receiver, etc., Plaintiff, against Meyer S. Bernheimer, *et al.*, as Receiver, etc., Defendants.—Order and consent of substitution.—Liebmann, Naumburg & Tanzer, Attorneys at Law, 32 Broadway, New York.—U. S. Circuit Court, Southern District New York, Filed Nov. 3, 1905, John A. Shields, Clerk.

37 At a State Term of the Circuit Court of the United States of America for the Southern District of New York in the Second Circuit, held at the United States Court Rooms in the Borough of Manhattan, in the City of New York, on Friday, the 9th day of March in the year of our Lord 1906.

Present: Honorable George C. Holt, Judge.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company,

against

MAYER S. BERNHEIMER and LORIN BERNHEIMER, as Surviving Executors of the Last Will and Testament of Simon Bernheimer, Deceased.

Now comes the plaintiff, by William C. Wilson, Esq., his attorney, and moves the trial of this cause. Likewise come the defendants by L. A. Tanzer, Esq., their attorney. Thereupon a jury is impanelled and the cause proceeds to trial.

After hearing the evidence for the respective parties and the arguments of counsel, the jury, by direction of the court find a verdict for the plaintiff in the sum of $3,600, with interest $675., amounting in all to the sum of $4,275., subject to correction.

Thereupon the court denies a motion for a new trial, and grants defendants a stay of sixty days after entry of judgment within which to make and serve a case with leave to turn the same into a bill of exceptions.

An extract from the minutes.

(Signed)

JOHN A. SHIELDS, *Clerk.*

38 Circuit Court of the United States for the Southern District of New York.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff,

against

MAYER S. BERNHEIMER and LORIN S. BERNHEIMER, as Surviving Executors of the Last Will and Testament of Simon Bernheimer, Deceased, Defendants.

Judgment.

The issues in this action having been brought to trial before the Hon. George C. Holt, United States Judge and a jury at a Stated Term of the Circuit Court of the United States, held on the 9th day of March, 1906, in the United States Court Room, in the Post Office Building, in the Borough of Manhattan, City of New York, and the plaintiff appearing by William G. Wilson, his counsel, and the defendants appearing by Lawrence Arnold Tanzer, their counsel and the issues having been tried and a verdict for the plaintiff having been duly rendered against the defendants by direction of the court, on the said 9th day of March, 1906, for the sum of Four thousand, two hundred, seventy-five dollars ($4,275), which, with interest thereon to the date hereof, amounts to the sum of Four thousand, two hundred, seventy-eight 56/100 Dollars ($4,278.56) and the costs of said plaintiff having been duly adjusted at the sum of Thirty nine 51/100 Dollars ($39.51).

Now, on motion of Wilson & Wallis, attorneys for the plaintiff it is

Adjudged that the said plaintiff Theodore R. Converse as Receiver of the Minnesota Thresher Manufacturing Company, recover of the said defendants Mayer S. Bernheimer and Lorin S. Bernheimer, as surviving Executors of the last will and testament of Simon Bernheimer, deceased the sum of Four thousand two
39 hundred and seventy-five dollars ($4,275) found by the jury, with interest thereon as aforesaid, amounting together to the sum of Four thousand two hundred and seventy eight 56/100 dollars ($4,278.56) and with Thirty-nine 51/100 ($39.51) costs, amounting in all to the sum of Forty-three hundred eighteen 07/100 Dollars ($4318.07) and that we have execution therefor.

Judgment signed and entered this 14th day of March, 1906.

JOHN A. SHIELDS, *Clerk.*

(Endorsed:) U. S. Circuit Court, Southern District of N. Y.—Theodore R. Converse, as Receiver, &c. agst. Mayer S. Bernheimer & ano. as surviving executors &c. of Simon Bernheimer, dec'd.—Judgment.—Wilson & Wallis, Attorneys for Plaintiff, 48 Wall Street, New York.—U. S. Circuit Court, Southern District New York, Filed Mar. 14, 1906, John A. Shields, Clerk.

40 United States Circuit Court, Southern District of New York.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff,
against
MAYER S. BERNHEIMER and LORIN S. BERNHEIMER, as Surviving Executors of the Last Will and Testament of Simon Bernheimer, Deceased, Defendants.

Bill of Exceptions.

The issues in this action came on for trial at the October 1905 term of this court, and on the 9th day of March, 1906, were tried before Honorable George C. Holt, District Judge, and a jury, the parties being represented respectively by their attorneys and counsel, namely, Messrs. Wilson & Wallis, attorneys for plaintiff, and William G. Wilson, Esq., and George E. Coney, Esq., of counsel; and the defendants by Messrs. Liebmann, Naumburg & Tanzer, their attorneys, and Laurence Arnold Tanzer, Esq., of counsel.

During the course of the trial, the counsel for the defendants did take and allege sundry exceptions to the rulings of the court, and to the refusal of the court to dismiss the complaint, and to the refusal of the court to direct a verdict for the defendants, and to the denial by the court of certain motions made by the defendants, and to the direction by the court of a verdict for the plaintiff, which exceptions are hereinafter specifically set forth.

41 The following are the proceedings had and all the evidence given upon the trial of this action.

A jury was impanelled and sworn.

Counsel for the defendants moved to dismiss the complaint and for judgment for the defendants on the pleadings on the following grounds:

1. That the complaint does not state facts sufficient to constitute a cause of action in favor of the plaintiff against the defendants.

2. That Chapter 272 of the General Laws of Minnesota of 1899 under the alleged authority of which the assessment here sued upon is claimed to have been levied, contravenes the provisions of Section 10 of Article I of the Constitution of the United States, in that it impairs the obligation of the contracts of the stockholders of the Minnesota Thresher Manufacturing Company, and of the creditors of the said corporation, and particularly of the defendants' testator and of these defendants as his executors.

3. That these defendants were not parties to the proceeding in which the said assessment was assumed to be levied and are not bound thereby.

4. That the said Chapter 272 of the General Laws of Minnesota of 1899, and all proceedings had thereunder, so far as it is sought thereby to charge with liability or to affect these defendants, or to take their property in the amounts and for the purposes men-

42 tioned in the complaint, contravene the provisions of Section 1 of Article XIV of the Amendments to the Constitution of

the United States, in that they deprive the stockholders of said corporation, who were not parties to the said proceedings, nor heard therein, nor served with process therein, and particularly these defendants, of property without due process of law, and deny to them the equal protection of the laws.

5. That the District Court of Washington County, Minnesota, had no jurisdiction to entertain the said proceedings or to appoint a receiver, or to levy an assessment therein, because the proceeding in said court was not a proceeding of the nature contemplated by, or instituted in the manner directed in, said Act of 1899, or Chapter 76 of the General Statutes of Minnesota.

6. That the plaintiff has no such title or interest as gives him a standing to maintain this action in a court of a jurisdiction other than that in which he was appointed.

7. That the said Minnesota Thresher Manufacturing Company was a corporation organized for the purpose of carrying on a manufacturing business, and its stockholders are exempt from liability under the provisions of Section 3 of Article X of the Constitution of the State of Minnesota.

8. That this action was not brought within two years after these defendants or their testator ceased to be stockholders in said corporation, within the meaning of Section 55 of the Stock Corporation Law of the State of New York.

43 Decision reserved until plaintiff rests.

Mr. Wilson opened the case for the plaintiff.

Counsel for plaintiff reads in evidence stipulation as to facts, and asks that it be marked in evidence.

Marked Plaintiff's Exhibit A, and is as follows:

44 "U. S. Circuit Court, Southern District of New York.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company,

against

MAYER S. BERNHEIMER and LORIN S. BERNHEIMER, as Surviving Executors of the Last Will and Testament of Simon Bernheimer, Deceased.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company,

against

MAX DREY, CHARLES D. BERNHEIMER, and MEYER A. BERNHEIMER, as Executors of the Last Will and Testament of Isaac Bernheimer, Deceased.

Stipulation as to Facts.

It is hereby stipulated and agreed that the following facts are admitted by plaintiff and defendants in the two above entitled actions, and that upon the trial of said actions this stipulation shall be received in place and stead of other proof of such facts, without

prejudice to any objections to be taken upon the trial upon any other ground than that of the form and mode of proof of the facts herein contained:

Said plaintiff is a resident and citizen of the State of Min-
45 nesota.

The Northwestern Manufacturing & Car Company was incorporated under the laws of Minnesota by certificate filed May 12, 1882. The purpose of its incorporation as expressed in said certificate was that "of manufacturing, building, and selling passenger cars, freight cars, cattle cars, flat cars, and all other kinds of cars, and the fixtures and attachments thereto belonging, and the manufacture and sale of farm implements and machinery of all kinds, and the manufacture and sale of all articles, implements, and machinery, of which wood and iron form the principal component parts."

The Minnesota Thresher Manufacturing Company was incorporated under the laws of the State of Minnesota by certificate filed December 5, 1884. The articles embodied in this certificate were never changed in any respect excepting by an amendment changing the place of business specified therein from St. Paul, Ramsey County, Minnesota, to Stillwater, Washington County, Minnesota. The particulars and details of this certificate of incorporation may be proved by either party by the introduction in evidence of a true copy thereof.

The Minnesota Thresher Manufacturing Company, in the interval between the date of its incorporation in 1884 and the month of January, 1888, was engaged in the exchange of certain portions of its capital stock for claims against said Northwestern Manufacturing
& Car Company, with the holders of these claims, and for
46 certain shares of the capital stock of said Northwestern Manufacturing & Car Company with the holders of such stock, and during the same period was engaged in no other business. And during the same period, the business of said Northwestern Manufacturing & Car Company and the management of the property of that company were carried on by a receiver of that company, who had been appointed by the District Court of the State of Minnesota.

The property, assets, and business of said Northwestern Manufacturing & Car Company were sold by the receiver of that company under order of the District Court of Minnesota for Washington County, and on such sale, was purchased by said Minnesota Thresher Manufacturing Company; and the last named company obtained actual possession of the same and began active business therewith on January 5, 1888.

On May 6, 1901, the Merchants' National Bank of St. Paul, a national banking association organized under the laws of the United States, obtained a judgment in the District Court of Minnesota for the County of Ramsey against said Minnesota Thresher Manufacturing Company for the sum of $2,938.07; and executions upon such judgment were issued to the Counties of Ramsey and Washington and returned wholly unsatisfied. Further details and particulars of this judgment and executions may be proved by either party by

he introduction in evidence of a true copy of the same. Thereupon
uit was brought in the District Court of Minnesota for Washington
County by said Merchants' National Bank of St. Paul against
7 said Minnesota Thresher Manufacturing Company, seeking
the appointment of a receiver of the defendant and the en-
orcement of the individual liability of the defendant's stockholders.
n said suit, the plaintiff, Theodore R. Converse was, on August 16,
1901, appointed such receiver, and qualified as such and entered
on the duties of such receivership, and still continues in such office.
And such further proceedings were had therein that on December
23, 1902, said court made an order or decree assessing the sum of
$18.00 per share on each share of the capital stock of the defendant
and against the person, corporation or party liable as a stockholder
therefor, and directing said receiver, in case of the non-payment of
the same within a time thereby fixed, to bring and maintain actions
against the persons, corporations, or parties so liable in any juris-
diction within the United States. Further details and particulars
of said proceedings may be proved by either party by the intro-
duction in evidence of true copies of the record thereof.

Said plaintiff, Theodore R. Converse, complied with the require-
ments of the orders and decree of said District Court of Minnesota
for Washington County, by mailing the notices therein directed to
be so served to all the stockholders of record of said Minnesota
Thresher Manufacturing Company whose addresses were known to
him.

Said plaintiff, Theodore R. Converse, as such receiver of said
Minnesota Thresher Manufacturing Company, did not come into
possession of any property or assets of that company other
48 than the books and records of the company, and such right as
was vested in him by law and by the orders and decree of the
District Court of Minnesota to enforce the individual liability of
stockholders of that company and to collect the assessment aforesaid.

An appeal from said order or decree of the District Court of
Washington County, Minnesota, making the assessment aforesaid,
was taken to the Supreme Court; and thereafter, and after hearing,
said Supreme Court gave its decision and judgment affirming said
order or decree of said District court; and the decision of said Su-
preme Court thereupon is reported under the title of Merchants'
National Bank against Minnesota Thresher Manufacturing Com-
pany, in Volume 90 of Minnesota Reports, page 144. Said plaintiff
gave notice of this decision by mailing a copy of the same to each
stockholder of said Minnesota Thresher Manufacturing Company
whose name and address were known to him.

(Signed) WILSON & WALLIS,
Plaintiff's Attorneys.
JACOB & TANZER,
Defendants' Att'ys.

49 Plaintiff's counsel offers in evidence the Articles of Asso-
ciation of the Minnesota Thresher Manufacturing Company.
Marked Plaintiff's Exhibit B, and is set forth in full in paragraph
"Third" of Defendants' Exhibit 1, hereinbelow contained.

Also order of the District Court of the State of Minnesota for the County of Washington, in the suit of the Merchants' National Bank of St. Paul Minnesota, plaintiff *vs.* the Minnesota Thresher Manufacturing Company, defendant, dated December 22nd, 1902.

Marked Plaintiff's Exhibit C and is set forth in full in paragraph "Eighteenth" of Defendant's Exhibit 1, which is herein below set forth.

Plaintiff rests, subject to computation of interest.

Defendants' counsel renews motion to dismiss the complaint and for judgment for the defendants on the grounds heretofore stated, and on the additional ground that no cause of action has been pleaded or proved.

The COURT: "I will pass upon that when you put your evidence in."

Defendants' counsel reads in evidence stipulation as to facts, so far as the same has not already been read in evidence.

Marked Defendants' Exhibit 1, and is as follows:

50 U. S. Circuit Court, Southern District of New York.

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff,

against

MAYER S. BERNHEIMER and LORIN S. BERNHEIMER, as Surviving Executors of the Last Will and Testament of Simon Bernheimer, Deceased, Defendants.

Agreed Facts.

The following facts are agreed for the purposes of this case only, and saving to the parties to this agreement, and each of them, any and all objection to the competency or materiality of said facts, or any of them, and reserving to the parties and each of them the right to prove any other material fact.

First. In September, 1874, a corporation was organized under the laws of Minnesota by the name of Seymour, Sabin & Co., for the purpose of carrying on the business of general manufacturing, merchandising, and lumber. The corporation acquired and possessed at Stillwater, Washington Co., Minnesota, an extensive manufacturing establishment and plant, consisting of real estate, buildings, machinery, and appliances necessary therefor, and manufactured and sold principally threshing machines and other farm and agricultural machinery and implements, which it sold largely upon credit, taking in many cases in payment mortgages, farmers' notes, or other liens on the property sold. This business of the
51 manufacture and sale of threshing machines and agricultural machinery and implements increased until, in 1882, the company had over one million dollars of bills receivable, and claims for threshing machines, agricultural machinery and implements sold as above set forth.

In May, 1882, the company sold all its real estate, buildings, manufacturing property and plant used in said manufacturing business, and said bills receivable and claims due from its customers, as above set forth to the Northwestern Manufacturing and Car Company, a corporation organized for the "manufacture, building, and sale of steam engines of all kinds, and the manufacture, building, and sale of passenger cars, freight cars, flat cars, cattle cars, and all other kinds of cars, and the fixtures and attachments thereto belonging, and the manufacture and sale of farm implements and machinery of all kinds, and the manufacture and sale of all articles, implements, and machinery of which wood and iron form the principal component parts, and the manufacture of the materials therein used," and which had preferred and common stock.

Second. Said Northwestern Manufacturing and Car Company continued the manufacturing business at Stillwater, carrying on the same in the manner in which it had been carried on by Seymour, Sabin & Co. so far as it related to the manufacturing of threshing machines, agricultural machinery, and implements, and added thereto the business of manufacturing cars, and as a part thereof realized upon and collected the bills receivable and claims of Seymour, Sabin & Co. upon its customers. Subsequently the Northwestern Manufacturing and Car Company became embarrassed and unable to meet its obligations, and May 10, 1884, a receiver of said corporation and its property was appointed by the District Court of Washington Co., Minn., and said receiver took possession of the real estate, manufacturing property, plant, bills receivable, and other assets of said Northwestern Manufacturing and Car Company, and carried on the business under the orders of the court.

Third. Most of the creditors of the Northwestern Manufacturing and Car Company were in the New England States, and on Nov. 25, 1884, a meeting of the creditors was held at Boston, there being present about one hundred creditors representing in all two million dollars of indebtedness of the company, the total indebtedness being about two million six hundred thousand dollars. A
52 committee was appointed by that meeting and instructed to prepare the details of a plan of reorganizing the company, which was unanimously adopted by the creditors. The proceedings of that meeting, and its action, and the plan of reorganization adopted were as follows:

To the creditors of the Northwestern Manufacturing and Car Company, of Stillwater, Minn.:

Pursuant to the instructions of a large meeting of the creditors held at Boston on the 25th day of November, 1884, at which about one hundred creditors were present, representing nearly two million dollars of the indebtedness, the undersigned, your committee, appointed at such meeting and instructed to prepare the details of the plan of reorganizing the company on the basis which was unanimously adopted by a vote of those present at the meeting referred to, beg leave to report as follows:

For the benefit of those creditors who were not present at the meeting, your committee desires to state that representatives of the

company and Colonel Bend, an expert accountant residing at St. Paul, Minn., who has been in the employ of the receiver, but had not previously been connected with the company, presented to the meeting the full detailed inventory of all the assets and liabilities of the company. Considerable time was taken up in a thorough analysis of the assets.

It appears plainly to the meeting and to your committee that the valuation put upon these assets by the receiver, as disclosed in the inventory and the printed statement heretofore distributed among the creditors, was an eminently conservative valuation, if the business of the company should be continued, but if the company's affairs are to be closed up and the assets sold out for cash, the valuation made by the receiver would be much too high. This arises from the nature of the assets. For illustration, take the first item of the inventory:

"Cars and machines constructed and in process of construction, and materials for same, $1,535,887.70."

While the valuation of this item made by the receiver as stated is considerably below the actual cost, from an inspection of the details the item appears to consist largely of lumber, iron, etc., bought with special reference to this business and still further depreciated in value for the general market, by being partly cut up and shaped for these particular machines, it is quite evident that if the company should go out of business, thus necessitating the selling of this material, much of the iron would only be valuable as scrap, and much of the lumber as kindling wood, and instead of realizing for the creditors $1,500,000 in round numbers, at best would realize but a few hundred thousand dollars. For reasons hereafter stated it is considered impracticable to work this material up into completed machines and then quit the business.

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The real estate valued at $413,526.50 is pretty much all in Stillwater, a city very largely dependent upon the business of this company, and therefore the destruction of its business would affect the value of this property unfavorably to a very considerable although probably not to the same extent as the previous item.

The item of "machinery, tools, and fixtures, $127,489.60," all experience proves conclusively belongs to the same category, and as much of the machinery and many of the tools of this concern are designed especially for this particular business and worthless for any other, it is evident but very little would be realized from the sale of them.

The whole list of assets is to a greater or less extent subject to the same conditions, and your committee will only make special mention of one other item which is a very large one, viz.: "Bills receivable and accrued interest, $1,524,007.48." The bulk of this item consists of

Farmers' notes	$1,245,000.00
Accrued interest on same	155,000.00
Total	$1,400,000.00

This is the receiver's valuation and is at the rate of seventy-eight per cent. of the face value. The face value would therefore be $1,780,000.00 in round numbers. They consist of notes, varying in amounts from $100, to $800 and $900, given by farmers living largely in remote and sparsely settled districts in Minnesota, Dakota, Iowa, Missouri, Nebraska, Kansas, Texas, and the Pacific States, with scattering makers through some of the older western and southwestern States. In a majority of instances there is no collateral security except the machines sold.

With the company in existence keeping up its agencies to sell additional machines, each agent carrying a full stock of separate parts of the machines (technically known as "repairs") to replace any parts which may break or wear out, the experience of other concerns engaged in selling like machinery on these terms seems to warrant the conclusion that ninety-five per cent. of these notes will be ultimately collected.

But if the company closes up its affairs and quits the business, it may practically destroy the value in the hands of the farmer of many of the machines which may have been sold and for which these notes were given. Because, as soon as a cog-wheel or other part of his machine breaks or wears out, the owner would be unable to replace it; hence his machine becomes useless and he must of necessity throw it aside and buy another of some existing concern who will be able to furnish the needed "repairs." When his machine has thus become useless to him, by reason of the failure of the company to carry out the implied contract which always exists between the vendor and vendee of this class of machinery, and he is called upon to pay for it, the chances are that he will demur. He will think he has an equitable if not a legal defence and be slow and loath to pay. The same reason which would make it hard to collect notes given in payment for machines already sold would make it quite impossible to sell new machines; hence it would be impracticable to work up material now on hand into machines, sell the machines, and then quit the business.

This condition of affairs would evidently much reduce the actual value of this large asset of the company, and would probably carry it far below the receiver's valuation.

Another fact appeared at the meeting which the statement of the receiver does not disclose, which is of great importance in this connection.

It is that over $1,300,000 of these farmers' notes are hypothecated to secure about $1,000,000 of the company's "bills payable," thus removing this large amount from the assets available to pay the unsecured liabilities of the company.

The foregoing are in brief the facts brought out at the meeting, as your committee understood them, and in view of which it seemed to be the unanimous opinion of the creditors present that it was for the best interests of all concerned as creditors to reorganize the company on the basis of giving each creditor the par value of his claim in a preferred stock which should practically amount to a first lien

on all the unhypothecated assets of the company, and a com-
55 mon stock to the present preferred stockholders of the company, and your committee was instructed to take the necessary steps and prepare details for carrying into effect the reorganization desired.

Plan of Reorganization.

Acting under your instructions, your committee has had the articles of association required under the laws of Minnesota to form a new corporation drawn up and executed, a copy of which accompanies this report. This new corporation is to be called the "Minnesota Thresher Manufacturing Company."

The objects for which it is organized are:

First. To buy the claims and indebtedness against the old company by giving to the creditors the preferred stock of the new company at par for their claims, with interest added at the rate of seven per cent. per annum up to Jan. 1, 1885.

Second. To buy the preferred stock of the old company by giving one share of common stock of the new company in exchange for one share of preferred stock of the old company.

Third. To purchase at the judicial sale, which will ultimately be made in the action now pending wherein the present receiver has been appointed, all the assests, including the good will of the old company as an entirety and as a "going concern."

Fourth. Thereafter continue the business of the old company in all its branches except the manufacture of cars.

The management of this new corporation has been placed in thirteen directors who shall be stockholders, and elected by the stockholders. Until the first meeting of the stockholders in June next, the following persons have been designated as directors, all of whom, except two who are stockholders of the old company, represent large creditors:

Directors.

Ezra Farnsworth, of Boston National Bank, Boston, Mass.
John S. Fogg, of Fogg Bros. & Co., Boston, Mass.
Francis A. Osborn, Tremont National Bank, Boston, Mass.
56 Samuel R. Payson, National City Bank, Boston, Mass.
John B. Bacon, First National Bank, Chelsea, Vt.
Gustavus F. Davis, City National Bank, Hartford, Conn.
William H. Rhawn, National Bank of the Republic, Philadelphia, Pa.
W. E. Rice, City National Bank, Worcester, Mass.
O. D. Baldwin, Fourth National Bank, New York.
Abraham O. Bigelow, Massachusetts National Bank, Boston, Mass.
Edward F. Lawrence, First National Bank, Chicago, Ill.
A. B. Stickney, President M. & N. W. R. R. Company, St. Paul, Minn.
R. F. Hersey, Hersey, Bean & Brown, Stillwater, Minn.

Preferred Stock of the New Company.

By the terms of the new organization it will be seen that the preferred stock is made a first lien upon all the assets of the company both to secure its preference dividend of seven per cent. per annum, and to secure its par value when the concern is closed up (if ever it shall be) by voluntary liquidation or otherwise. The annual net earnings of the company are to be applied as follows:

1st. To pay a dividend on the preferred stock to the extent of seven per cent. of its par value.

2d. Any earnings more than enough to pay this dividend of seven per cent. on the preferred stock are to be retained by the company and carried to its surplus account until a sum equal to ten per cent. of its outstanding preferred stock shall have been accumulated. If in any year the earnings of the company are insufficient to pay a dividend of seven per cent. on its preferred stock, the deficiency may be made good out of the surplus, in which case no dividend can be paid on the common stock until out of its earnings after paying the preference dividend this surplus fund has been fully restored.

3d. The surplus fund having been realized and remaining unimpaired after payment of seven per cent. on its preferred stock, the board of directors may, if they think it prudent, declare and pay not exceeding seven per cent. on the common stock.

4th. If after seven per cent. has been paid on both the com-
57 mon and preferred stock, as before explained, there should remain net earnings of any year which the directors should deem advisable to divide, this surplus will be divided pro rata between all the common and preferred stockholders.

Place of Business.

The principal place of business as named in the articles is St. Paul, Minn. This does not mean that it is proposed to remove the factory, shops, etc., from Stillwater, but as St. Paul is the principal financial and railroad centre of the State, your committee was unanimous in opinion that the financial business offices of the company should be in that city.

With the explanations given it is believed the articles of association will be fully understood.

In conclusion your committee desires to remind the creditors that the successful carrying out of this plan of reorganization will be greatly facilitated by prompt action on their part, and they have therefore caused a form of subscription to the preferred stock of the new company to be prepared and sent out to the creditors with this report. If you desire to avail yourself of it please fill out the blank subscription and mail it to any one of the committee.

No individual liability attached to a subscription, and the stock when issued will be full paid and non-assessable.

All of which is respectfully submitted.

Dated Nov. 29, 1884.

EZRA FARNSWORTH,
JOHN H. FOGG,
FRANCIS A. OSBORN,
SAMUEL R. PAYSON,
JOHN B. BACON,
GUSTAVE F. DAVIS,
W. H. RHAWN,
Committee.

58 *Form of Subscription to the Preferred Stock of the Minnesota Thresher Manufacturing Company.*

Whereas, the Minnesota Thresher Manufacturing Company has been incorporated under the laws of the State of Minnesota for the purpose of purchasing claims and demands against the Northwestern Manufacturing and Car Company, and also the preferred capital stock of said last mentioned corporation, and finally to purchase at judicial sale all the assets of said last mentioned corporation, and thereafter to continue the business thereof.

Now therefore, Know all men by these presents that the undersigned, being a creditor of said Northwestern Manufacturing and Car Company, in consideration of like subscription by other creditors, do hereby subscribe to the preferred capital stock of said Minnesota Thresher Manufacturing Company, and do hereby agree to and with the Minnesota Thresher Manufacturing Company to assign to it the claims and demands which are more fully described in the schedule on the back of this paper at the face value thereof, with interest added at the rate of seven per cent. per annum until Jan. 1, 1885, and take in payment therefor the preferred stock of said Minnesota Thresher Manufacturing Company at par as soon as notified that certificates for said stock are ready for delivery.

The exchange of securities is to be made at the Tremont National Bank, Boston, Mass.

It is distinctly understood that this subscription does not bind the Minnesota Thresher Manufacturing Company to accept the same to a greater extent than the claims described in the schedule shall be found to be valid and existing claims against said Northwestern Manufacturing and Car Company.

Dated at ——, this — day of ——, 18—. —— Bank, By ——
P. O. Address ——.

59 *Articles of Association of the Minnesota Thresher Manufacturing Company.*

We, the undersigned, Ezra Farnsworth, John S. Fogg, Francis A. Osborn, Samuel R. Payson, all of Boston, Massachusetts; John B. Bacon, of Chelsea, Vermont; Gustavus F. Davis, of Hartford, Con-

necticut; William H. Rhawn, of Philadelphia, Pennsylvania; Alpheus B. Stickney, of St. Paul, Minnesota; and Roscoe F. Hersey, of Stillwater, Minnesota, do by these presents, pursuant to and in conformity with an act of the legislature of the State of Minnesota, entitled "An act relating to manufacturing corporations," approved March 7, 1873, and the several acts of said legislature amendatory thereof, associate ourselves together, and hereby form a body politic and corporate, and we do hereby certify:

First. That the corporate name of said corporation is "Minnesota Thresher Manufacturing Company."

Second. The objects for which this corporation is formed are the purchase of the capital stock, evidences of indebtedness issued by it, and the assets of the Northwestern Manufacturing and Car Company, a corporation existing under the laws of the State of Minnesota, or any portion of said capital stock, evidences of indebtedness or assets, and the manufacture and sale of steam engines of all kinds, farm implements and machinery of all kinds, and the manufacture and sale of all articles, implements and machinery of which wood and iron or either of them form the principal component parts, and the manufacture of the materials therein used.

Third. The capital stock of said corporation shall be seven millions of dollars, which shall be divided into one hundred and forty thousand shares of fifty dollars each. This stock shall be classified and issued in manner following, that is to say: There shall be issued two classes of stock, denominated preferred and common stock. The amount of the former shall be four millions of dollars, or eighty thousand shares of fifty dollars each; and of the latter three millions of dollars, or sixty thousand shares of fifty dollars each. The preferred stock shall be entitled to a dividend not exceeding seven per cent. per annum, payable out of the earnings of each calendar year, to be made up, if necessary, out of the surplus hereinafter provided for, commencing with the first day of January, 1885, which shall be declared and paid from the net earnings or surplus of the
60 corporation, before any dividend shall be declared or paid on the common stock; and no dividends shall be paid on the common stock until a surplus of ten per cent. on the outstanding preferred stock is accumulated. No part of said surplus shall be used except to make the preference dividend on the preferred stock seven per cent. when the earnings of any year shall be insufficient to pay seven per cent. on the preferred stock. Whenever any portion of the surplus is thus used, or whenever the surplus is otherwise impaired, the surplus shall be fully restored before any dividend is paid on the common stock. After a dividend of seven per cent. shall have been paid on both the preferred and common stock in any calendar year out of the earnings of said corporation for that year, both the preferred and common stock shall be entitled to participate equally in any further dividend which may be declared and paid out of the net earnings of that year. In case of the voluntary or other dissolution of the corporation, the preferred stock, to the extent of its par value, shall be first paid out of the assets

of the corporation, before any payment shall be made upon the common stock. After a surplus has been accumulated as hereinbefore provided, and while it so remains unimpaired, as so provided, the common stock shall be entitled to such dividend as the board of directors may determine to pay from the net earnings of the corporation for each calendar year after paying the dividends on the preferred stock; provided always, that after a dividend of seven per cent. shall have been declared and paid out of the net earnings of the corporation for any calendar year on both the preferred and the common stock, both the preferred and the common stock shall be entitled to participate equally in any further dividends which may be declared and paid out of the net earnings.

Fourth. Said corporation shall commence on the twenty-sixth day of November, 1884, and shall continue in existence for the term of thirty years, and its affairs shall be managed by a board of directors consisting of thirteen stockholders, who shall be elected annually. Provided, that the first board of directors, who shall hold their office until the first election by the stockholders, which election shall be on the third Wednesday of June, 1885, shall consist of the following persons: Ezra Farnsworth, John S. Fogg, Francis A. Osborn, Samuel R. Payson, John B. Bacon, Gustavus F. Davis, Wm. H. Rhawn, Alpheus B. Stickney, Roscoe F. Hersey, W. E. Rice, Octavus D. Baldwin, Abram O. Bigelow and Edward F. Lawrence.

61 Fifth. The principal place of business of this corporation shall be in the city of St. Paul, county of Ramsey, and State of Minnesota.

We hereby adopt the foregoing articles of association of the Minnesota Thresher Manufacturing Company, for the purpose of becoming a body politic and corporate under said name.

In witness whereof we have hereunto set our hands and seals this twenty-sixth day of November, A. D. 1884.

EZRA FARNSWORTH, [SEAL.]
JOHN S. FOGG, [SEAL.]
FRANCIS A. OSBORN, [SEAL.]
JOHN B. BACON, [SEAL.]
WM. H. RHAWN, [SEAL.]
ALPHEUS B. STICKNEY. [SEAL.]

Signed, sealed and delivered by
EZRA FARNSWORTH,
JOHN S. FOGG,
FRANCIS A. OSBORN,
JOHN B. BACON,
WM. H. RHAWN, AND
ALPHEUS B. STICKNEY,
In the presence of
W. B. BEND,
L. VERNON BRIGGS.

SAMUEL R. PAYSON. [SEAL.]

Signed, sealed and delivered by
SAMUEL R. PAYSON,
In the presence of
EDGAR S. BRISTOL,
L. VERNON BRIGGS.

GUSTAVUS F. DAVIS. [SEAL.]

Signed, sealed and delivered by
G. F. DAVIS,
In the presence of
C. T. WELLES,
W. B. BEND.

ROSCOE F. HERSEY. [SEAL.]

Signed, sealed and delivered by
R. F. HERSEY,
In the presence of
E. L. HERSEY,
PAUL GORES.

STATE OF MASSACHUSETTS, *County of Suffolk, ss:*

Be it known that on this 26th day of November, A. D. 1884, personally came before me said Ezra Farnsworth, John S. Fogg, Francis A. Osborn, John B. Bacon, Wm. H. Rhawn, Alpheus B. Stickney, to me personally known to be the same persons de-
62 scribed in and who executed the foregoing articles of association, and they each for himself acknowledged that they executed the same freely and voluntarily.

[NOTARIAL SEAL.] L. VERNON BRIGGS,
Notary Public.

STATE OF MASSACHUSETTS, *County of Suffolk, ss:*

Be it known that on this 29th day of November, A. D. 1884, personally came before me said Samuel R. Payson, to me personally known to be the same person described in and who executed the foregoing articles of association, and he for himself acknowledged that he executed the same freely and voluntarily.

[NOTARIAL SEAL.] L. VERNON BRIGGS,
Notary Public.

STATE OF CONNECTICUT, *County of Hartford, ss:*

Be it known that on the 29th day of November, A. D. 1884, personally came before me said Gustavus F. Davis, to me personally known to be the same person described in and who executed the foregoing articles of association, and he for himself acknowledged that he executed the same freely and voluntarily.

[NOTARIAL SEAL.] C. T. WELLES,
Notary Public.

STATE OF ILLINOIS, *County of Cook, ss:*

Be it known that on this 1st day of December, A. D. 1884, personally appeared before me a notary public, in and for said county and State, Roscoe F. Hersey, to me known to be the identical person who signed the foregoing instrument, and in due form of law acknowledged that he executed the same freely and voluntarily for the uses and purposes therein expressed.

[NOTARIAL SEAL.]

PAUL GORES,
Notary Public.

Filed December 5, A. D. 1884, at 9 A. M.

FRED VON BAUMBACH,
Secretary of State.

Statement of the Actual Assets and Liabilities of the Northwestern Manufacturing and Car Company, May 10, 1884.

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Assets.

Cars and machines constructed and in process of construction and materials for same		$1,535,887.70
Viz:		
Car account	$74,955.95	
Thresher	751,649.22	
Repairs	210,516.92	
Branches	165,985.60	
Foundry account	17,968.59	
Jobbing account	44,441.75	
Supplies	255,819.67	
Rolling stock	14,550.00	
Real estate and buildings		413,526.50
Viz:		
Real estate	$302,639.57	
Buildings	78,080.00	
Land	19,553.87	
Property at Fargo, etc	13,253.06	
Machinery, tools, and fixtures		127,489.60
Viz:		
Machinery	$70,518.22	
General tools	17,550.15	
Foundry tools	23,468.13	
Steam heating	7,490.71	
Water works	8,462.39	
Bills receivable and accrued interest		1,524,007.48
Viz:		
B. R. Thresher	$1,245,000.00	
B. R. Sundry	87,707.98	
B. R. Sabin's Ad	20,204.92	

	Accrued interest	155,000.00	
	Judgments	16,094.58	
64	Patents, patterns, teams, etc		$99,483.06
	Viz:		
	Patents	$50,000.00	
	Patterns	20,748.11	
	Teams	5,765.63	
	Office fixtures	1,700.00	
	Office stationery	300.00	
	Fuel	1,700.00	
	Advertising matter	3,000.00	
	Brick yard	1,500.00	
	Cooperage	1,089.85	
	Electric light	1,010.00	
	Insurance	6,669.47	
	Accounts receivable		672,384.41
	Viz:		
	Sundry accounts receivable $354,041.10		
	Less estimated discount 181,656.69	$172,384.41	
	Seymour, Sabin & Co.'s account $1,518,040.30		
	Less estimated discount 1,018,040.30	500,000.00	
	Total assets		$4,372,778.75

Liabilities.

	Bills payable, $1,675,251.01, less in hands of brokers	$1,645,251.01	
	Accommodation paper, $1,032,430.66, less in hands of brokers	939,680.62	
	Accounts payable	242,444.66	
	Seymour, Sabin & Co. preferred stock guaranteed by car company	500,000.00	
65	Notes of Seymour, Sabin & Co. secured by Car Co. B. R.	$40,000.00	
	Notes of D. M. Sabin secured by Car B. R.	18,500.00	
	Contingent liabilities (estimate of loss on discount bills receivable)	20,483.20	
	Total liabilities		$3,406,359.49
	Surplus as to creditors		$966,419.26

E. S. BROWN, *Receiver.*

Fourth. The Minnesota Thresher Manufacturing Company was organized and its stock subscribed for and paid in the claims and demands of the creditors against the Northwestern Manufacturing and Car Company, and in the preferred capital stock of that company. The Minnesota Thresher Manufacturing Company did nothing from the time of its organization until its purchase of the assets of the Northwestern Manufacturing and Car Company, except to issue its stock according to the plan of reorganization, and borrow certain sums of money for the necessary expenses of its organization and of acquiring by the issue of its stock the claims against and the preferred stock of the Northwestern Manufacturing and Car Company.

Fifth. Oct. 27, 1887, the manufacturing property and plant of the Northwestern Manufacturing and Car Company, and all bills receivable, farmers' notes, and other assets, which had been acquired by it, or by the receiver in the conduct of its business, were sold by order of the court in one lot at auction and purchased by the Minnesota Thresher Manufacturing Company pursuant to the plan of reorganization. Jan. 5, 1888, all these assets were conveyed to the Minnesota Thresher Manufacturing Company by the master appointed by the Court to make the conveyance, and in February, 1888, the Minnesota Thresher Manufacturing Company took possession of these assets, opened books of account and began the transaction of business. By amended articles of association, the place of business of the Minnesota Thresher Manufacturing Company was changed to Stillwater, Minnesota, on December 1st, 1887.

66 *Sixth.* The Minnesota Thresher Manufacturing Company carried on business until Dec. 14, 1900, when it became embarrassed, and its property and business were placed in the hands of a receiver by order of the United States Circuit Court for the district of Minnesota, third division, upon proceedings to foreclose a mortgage to the Massachusetts Loan and Trust Company upon its property, and thereafter the receiver conducted the business of said company substantially in the manner in which it had been conducted by the company itself, until a decree of foreclosure was entered, and in default of payment thereunder the property of the Minnesota Thresher Manufacturing Company was sold on the twenty-fifth day of May, 1901, and said sale was confirmed and deeds of said property delivered to the purchaser July 8, 1901.

Seventh. On the 28th day of March, 1885, Simon Bernheimer, being a holder of preferred stock of the Northwestern Manufacturing and Car Company, as such, subscribed for and became the owner of two hundred shares of the capital stock of the Minnesota Thresher Manufacturing Company of the aggregate par value of Ten thousand dollars, and paid for the same by an assignment of his said shares of preferred stock of the Northwestern Manufacturing and Car Company, and said shares of the stock of the Minnesota Thresher Manufacturing Company were issued to, received, and accepted by said Simon Bernheimer, and he at all times until his death since the issue thereof continued to be the owner and holder of the same, as appears by the stock books of said Minnesota Thresher Manufacturing Company.

The defendants are not and never have been residents of the State of Minnesota, and were not parties to and had no knowledge in fact of the proceedings set forth in the complaint wherein the assessment sued upon was made by the District Court of Washington County, Minnesota, upon the stockholders of the Minnesota Thresher Manufacturing Company, but the plaintiff claims that such stockholder was in law represented by said Minnesota Thresher Manufacturing Company in said proceedings.

Eighth. And when the Minnesota Thresher Manufacturing Company was organized, and when said Simon Bernheimer became a stockholder therein, and at all times when said company became indebted to any creditors for the benefit of whom the assessment sued upon was made, the only liability of stockholders under the laws of Minnesota, or otherwise, was under Article 10, Section 3, of the Constitution of Minnesota, which was in the following words:

"Each stockholder in any corporation (excepting those organized for the purpose of carrying on any kind of manufacturing or mechanical business) shall be liable to the amount of stock held or owned by him."

and the only method of enforcing such liability was under the following sections of Chapter 76 of the General Statutes of Minnesota of the year 1878 as re-enacted in the General Statutes of 1894, to wit:

"SECT. 5897. Whenever a judgment is obtained against any corporation incorporated under the laws of this State, and an execution issued thereon is returned unsatisfied in whole or in part, upon the complaint of the person obtaining such judgment, or his representatives, the District Court within the proper county may sequestrate the stock, property, things in action and effects of such corporation, and appoint a receiver of the same.

"SECT. 5905. Whenever any creditor of a corporation seeks to charge the directors, trustees or other superintending officers of such corporation, or the stockholders thereof, on account of any liability created by law, he may file his complaint for that purpose in any district court which possesses jurisdiction to enforce such liability.

"SECT. 5906. The Court shall proceed thereon, as in other cases, and when necessary shall cause an account to be taken of the property and debts due to and from such corporation, and shall appoint one or more receivers.

"SECT. 5907. If, on the coming in of the answer or upon the taking of any such account, it appears that such corporation is insolvent, and that it has no property or effects to satisfy such creditors, the Court may proceed, without appointing any receiver, to ascertain the respective liabilities of such directors and stockholders, and enforce the same by its judgment, as in other cases.

"SECT. 5908. Upon a final judgment in any such action to restrain a corporation or against directors or stockholders, the Court shall cause a just and fair distribution of the property of such corporation and of the proceeds thereof to be made among its creditors.

"SECT. 5909. In all cases in which the directors or other officers

of a corporation, or the stockholders thereof, are made parties to an action in which a judgment is rendered, if the property of such corporation is insufficient to discharge its debts, the Court shall
68 proceed to compel each stockholder to pay in the amount due and remaining unpaid on the shares of stock held by him, or so much thereof as is necessary to satisfy the debts of the company.

"SECT. 5910. If the debts of the company remain unsatisfied, the Court shall proceed to ascertain the respective liabilities of the directors or other officers and of the stockholders, and to adjudge the amount payable by each, and enforce the judgment, as in other cases.

"SECT. 5911. Whenever any action is brought against any corporation, its directors or other superintending officers, or stockholders, according to the provisions of this chapter, the Court, whenever it appears necessary or proper, may order notice to be published in such a manner as it shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the action, within a reasonable time, not less than six months from the first publication of such order, and, in default thereof, to be precluded from all benefit of the judgment which shall be rendered in such action, and from any distribution which shall be made under such judgment."

Ninth. April, 1899, the Legislature of Minnesota passed an "Act to provide for the better enforcement of the liability of stockholders of corporations," being Chapter 272, General Laws of Minnesota for the year 1899, which is as follows:

SECTION 1. Whenever any corporation created or existing by or under the laws of the State of Minnesota, whose stockholders or any of them are liable to it or to its creditors, or for the benefit of its creditors, upon or on account of any liability for or upon or growing out of, or in respect to the stock or shares at any time held or owned by such stockholders, respectively, whether under or by virtue of the constitution and laws of said State of Minnesota, or any statute of said State, or otherwise, has heretofore made or shall hereafter make any assignment for the benefit of its creditors under the insolvency laws of this State; or whenever a receiver for any such corporation has heretofore been or shall hereafter be appointed by any district court of this State, whether under or pursuant to any of the provisions of chapter seventy-six (76) of the General Statutes of eighteen hundred and ninety-four (1894) of Minnesota and the acts amendatory thereof, or under or pursuant to any other stat-
69 ute of this State or under the general equity powers and practice of such court; the district court appointing such receiver or having jurisdiction of the matter of said assignment may proceed as in this act provided.

SECT. 2. Upon the petition of the assignee or receiver of any such corporation, or of any creditor of such corporation who has filed his claim in such assignment or receivership proceedings, the said district court shall by order appoint a time for hearing not less than thirty (30) nor more than sixty (60) days from the time of filing said petition with the clerk of said Court, and shall direct such notice of such hearing to be given by the party presenting said petition, by

publication or otherwise, as the Court in its discretion may deem proper; but if said petition be filed by a creditor, other than the assignee or receiver of said corporation, the Court shall direct that notice of such hearing be personally served on such assignee or receiver.

SECT. 3. At such hearing the Court shall consider such proofs by affidavit or otherwise, as may then be offered by the assignee or receiver, or by any creditor or officer or stockholder of said corporation, who may appear in person or by attorney, as to the probable indebtedness of said corporation and the expenses of said assignment or receivership, and the probable amount of assets available for the payment of such indebtedness and expenses; and also as to what parties are or may be liable as stockholders of said corporation and the nature and extent of such liability. And if it appear to the satisfaction of the Court that the ordinary assets of said corporation, or such amount as may be realized therefrom within a reasonable time, will probably be insufficient to pay and discharge in full and without delay its indebtedness and the expenses of such assignment or receivership, and that it is necessary or proper that resort be had to such liability of its stockholders: the said Court shall thereupon by order direct and levy a ratable assessment upon all parties liable as stockholders, or upon or on account of any stock or shares of said corporation, for such amount, proportion or percentage of the liability upon or on account of each share of said stock as the Court in its discretion may deem proper (taking into account the probable solvency or insolvency of stockholders and the probable expenses of collecting the assessment); and shall direct the payment of the amount so assessed against each share of said stock to the assignee or receiver within such time thereafter as said Court may specify in said order.

SECT. 4. Said order shall direct the assignee or receiver to proceed to collect the amount so assessed against each share of said stock from the parties liable therefor; and shall direct and authorize said assignee or receiver, in case of the failure of any party liable upon or on account of any share or shares of said stock to so pay the amount so assessed against the same within the time specified in said order, to prosecute actions against each and every such party so failing to pay the same, wherever such party may be found, whether in this State or elsewhere.

SECT. 5. Said order and the assessment thereby levied shall be conclusive upon and against all parties liable upon or on account of any stock or shares of said corporation, whether appearing or represented at said hearing or having notice thereof or not, as to all matters relating to the amount of and the propriety of and necessity for the said assessment. This provision shall also apply to any subsequent assessment levied by said Court as hereinafter provided.

SECT. 6. It shall be the duty of such assignee or receiver to, and he may, immediately after the expiration of the time specified in said order for the payment of the amount so assessed by the parties liable therefor, institute and maintain an action or actions against any and every party liable upon or on account of any share or shares of said

stock who has failed to pay the amount so assessed against the same, for the amount for which such party is so liable. Said actions may be maintained against each stockholder, severally, in this State or in any other State or country where such stockholder, or any property subject to attachment, garnishment or other process in an action against such stockholder, may be found. But if said assignee or receiver shall in good faith believe any stockholder so liable to be insolvent, or that the expense of prosecuting such action against such stockholder will be so great that it will be of disadvantage to the estate and the interest of creditors to prosecute the same, said assignee or receiver shall so report to said Court; and shall not be required to institute or prosecute any such action unless specifically directed so to do by said Court. And in such case said Court shall not require said receiver to institute or maintain such action unless said Court shall have reasonable cause to believe that the result of such action will be of advantage to the estate and creditors of said corporation, except as hereinafter provided.

SECT. 7. In any case where the Court shall have levied an
71 assessment against stockholders as in this act provided, for a less amount or proportion than the full amount of the liability upon or on account of the stock of said corporation, and it shall thereafter be made to appear to the satisfaction of said Court, by petition or otherwise, and upon hearing as hereinbefore provided, that by reason of the insolvency of stockholders, or for any other cause, it is necessary or desirable or for the interest of creditors that another and further assessment upon or against said stock be levied, the Court shall by order direct and levy a further and additional assessment for such amount, proportion or percentage of the liability upon or on account of each share of said stock, as the Court in its discretion may deem proper, and in the same manner may levy further and additional assessments upon said stockholders, and against said stock, not exceeding in the aggregate, the maximum amount of liability upon or on account of the stock of said corporation.

SECT. 8. All the provisions of this act shall apply to any such assessment levied by said Court after the first, and to the proceedings preliminary to levying and directing the same, to the same extent and with the same force and effect as to the first assessment so levied under the provisions of this act.

SECT. 9. Where two (2) or more such assessments are levied or directed, the assignee or receiver may join the causes of action accruing against any stockholder upon any two or more such assessments in a single action against such stockholder or he may, at his discretion, unless otherwise directed by the Court, maintain a separate action against each stockholder for each successive assessment levied or directed.

SECT. 10. If said assignee or receiver shall fail to institute and prosecute an action against any stockholder who has failed to pay any such assessment or assessments, or to prosecute such an action with diligence after instituting the same, any stockholder or stockholders who have paid in full the amount of any such assessments, or any creditor or creditors of said corporation, may petition said Court

to require said assignee or receiver to prosecute such action against such stockholders so failing to pay as aforesaid, or to permit the party or parties so petitioning to institute and maintain, or to continue the prosecution of such action in the name of said assignee or receiver, and for the benefit of said estate, and if said party or parties
72 so petitioning shall furnish security or indemnity for costs and expenses as the Court may direct, the said Court shall thereupon require said assignee or receiver to forthwith prosecute such action, or in its discretion may permit such party or parties so petitioning to institute and prosecute or continue the prosecution of the same as aforesaid.

SECT. 11. If, after the payment of all the expenses of such assignment or receivership, and all indebtedness of and claims against said corporation proved or allowed in said proceedings, there shall remain any surplus money or property in the hands of the assignee or receiver, the same shall be distributed, under the direction of said Court, and in such a manner as may be just and equitable, among those stockholders who have paid the assessments levied against their stock as herein provided. And any stockholder who has so paid such assessments levied against his stock shall, in addition to any remedy herein provided for, be entitled to enforce contribution from stockholders who have not paid such assessments, and for that purpose may be subrogated to the rights of the creditors of said corporation against such defaulting stockholders, in such manner and to such extent as may be just and equitable.

SECT. 12. Whenever, in a proceeding heretofore instituted under the then existing laws of this State to enforce the liability of stockholders of any such corporation, a portion of the amount for which the stockholders of such corporation are liable has been collected, but the amount so collected is insufficient to pay and discharge claims against said corporation in full, and there remain stockholders who were not made parties to such proceedings, then, notwithstanding final judgment may have been rendered and entered in said proceeding against those stockholders who were made parties thereto, the district court having jurisdiction may proceed as in this act provided and may levy assessments in the manner herein prescribed to such extent as may be necessary to satisfy and discharge in full all claims against said corporation and all expenses of such proceedings. And the assignee or receiver, or the receiver appointed by said Court in such proceeding, may institute and maintain actions to recover the amount of such assessments in the same manner, with the same effect, as in the case of an assessment levied as provided in the preceding sections of this act, and all the provisions of this act shall apply to any stockholder who has paid, or from whom has been collected, in the course of such prior proceeding, any portion
73 of the amount for which he is liable for or on account of the stock held or owned by him, shall be credited upon any assessment levied against said stock as in this section provided with the full amount so paid by or collected from him.

SECT. 13. This act shall not apply to any action now pending to which stockholders of such corporations have been made parties under the provisions of chapter seventy-six (76), General Statutes of

eighteen hundred and ninety-four (1894), and acts amendatory thereto, and in which the issue as to who are stockholders has heretofore been tried and determined by the courts; except that after final judgment in such action, if a proper case exists under the provisions of section twelve (12) of this act, the Court and parties may proceed in the manner prescribed by said section twelve (12).

SECT. 14. All acts and parts of acts inconsistent herewith are hereby repealed.

SECT. 15. This act shall take effect and be in force from and after its passage.

Approved April 18, 1899.

Tenth. On May 6, 1901, the Merchants National Bank of St. Paul, Minn., a corporation duly organized and existing under the laws of the United States, recovered a judgment in the district court for Ramsey Co., Minn., against the Minnesota Thresher Manufacturing Company, for the sum of $2,938.07, on which judgment executions were issued and returned unsatisfied by the sheriffs of Washington Co. and of Ramsey Co., Minn. After the return of said executions said Merchants National Bank instituted in the district court for the county of Washington and State of Minnesota, a court of record and general jurisdiction, an action against said Minnesota Thresher Manufacturing Company, the summons, complaint, and return of service in which were as follows:

74 STATE OF MINNESOTA, *County of Washington, ss:*

District Court, First Judicial District.

* * * * * * *

MERCHANTS NATIONAL BANK OF ST. PAUL, MINN., Plaintiff,

v.

MINNESOTA THRESHER MANUFACTURING COMPANY, Defendant.

* * * * * * *

Summons.

The State of Minnesota to the above named defendant:

You are hereby summoned and required to answer the complaint of the plaintiff in the above entitled action, a copy of which is hereto attached and herewith served on you, and to serve a copy of your answer to the said complaint on the subscribers, at their office in the city of St. Paul in the county of Ramsey and State aforesaid, within twenty days after the service of this summons upon you, exclusive of the day of such service; and if you fail to answer said complaint within the time aforesaid, the plaintiff in this action will apply to the Court for the relief demanded in the complaint, besides the costs and disbursements of this action.

DAVIS, KELLOGG & SEVERANCE,
Plaintiff's Attorneys, Merchants National Bank Building, St. Paul, Minn.

Filed Aug. 17, 1901.
A. K. DOE, *Clerk.*

* * * * * * *

STATE OF MINNESOTA, *County of Washington:*

District Court, First Judicial District.

MERCHANTS NATIONAL BANK OF ST. PAUL, MINN., Plaintiff,
v.
MINNESOTA THRESHER MANUFACTURING COMPANY, Defendant.

Complaint.

* * * * * * *

And now comes the plaintiff above named and for its complaint against the defendant avers:

75 1. That plaintiff is and during all the times hereinafter mentioned has been a corporation organized, existing, and doing business under and by virtue of the laws of the United States of America as a national bank, having its principal office and place of business at St. Paul, in the State of Minnesota.

2. That the defendant, Minnesota Thresher Manufacturing Company, is and during all the times hereinafter mentioned has been a corporation organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, having its principal office and place of business in Stillwater in said State.

3. That at the city of Stillwater, Minn., on Nov. 1, 1900, the defendant made, executed, and delivered to the plaintiff its promissory note in writing dated on that day, by it signed, wherein and whereby for value received it promised and agreed to pay to the order of the plaintiff the sum of $2,900, four months after said date; that said note was given for money loaned to said defendant long prior to said Nov. 1, 1900, and that said note was a renewal of notes previously given evidencing the said debt; that the said indebtedness was created on or about the 3d day of June, 1889. That plaintiff is still the owner and holder of said debt against the defendant, and that no part of the same has been paid.

4. That heretofore and on or about the fourth day of March, 1901, the plaintiff brought an action against the defendant in the District Court for Ramsey Co., Minn., upon the said note of $2,900, and in said action sought judgment against the defendant for the sum of $2,900 and interest thereon since March 4, 1901, besides the costs and disbursements of said action.

That the summons and complaint in said action were duly served upon the said defendant on said March 4, 1901, and said District Court for Ramsey Co., Minn., duly had and acquired jurisdiction of the said cause and the parties thereto and the subject matter thereof, and such proceedings were thereafter duly had, that on the sixth day of May, 1901, judgment was duly entered and docketed in the said court in favor of the plaintiff and against the defendant for the sum of $2,938.07, and that said judgment remains wholly unpaid.

That thereafter and on the eighth day of May, 1901, the said judgment was duly entered and docketed in the county of Washington and State of Minnesota; that on the eleventh day of July, 1901, an

execution was duly issued out of and under the seal of said district court for Ramsey Co., Minn., directed to the sheriff of said
76 county of Ramsey, directing him to satisfy the said judgment out of any property of said defendant that he might find upon which such execution could be levied, and that on the twelfth day of July, 1901, the said sheriff duly returned said execution, and stated in his return that after diligent search and inquiry he had been unable to find any property upon which the same could be levied or out of which the same could be satisfied, and therefore returned said execution wholly unsatisfied.

That on the eleventh day of July, 1901, another execution was duly issued out of and under the seal of said district court for Ramsey Co., Minn., directed to the sheriff of the said county of Washington and State of Minnesota, commanding him to satisfy the said judgment out of any property that he might find subject to the levy of such execution.

That on the thirteenth day of July, 1901, the said sheriff of Washington Co. duly returned said execution, and in his return recited that after diligent search and inquiry he had been unable to find any property subject to the levy of such execution, and he therefore returned such execution wholly unsatisfied.

Plaintiff further alleges that the said defendant corporation has no property out of which the said judgment can be satisfied.

That in the year 1888 all of the property of said defendant corporation then owned by it, or thereafter to be acquired, was mortgaged, conveyed, transferred and set over to the Massachusetts Loan and Trust Company, a corporation organized and existing under the laws of the State of Massachusetts, having authority to act as trustee of mortgage indentures, and that various supplementary mortgages were given to said Massachusetts Loan and Trust Company in addition to said original mortgage so made in the year 1888.

That said mortgage was given to secure an issue of $1,600,000 par value of first mortgage bonds of said defendant, which said bonds were duly signed and certified by said trustee, issued and sold to various innocent holders for value.

That after the making of said mortgage in the year 1888 and the sale of said bonds, all of the same, with the exception of $492,000 par value of said bonds, were paid and satisfied by said defendant.

That default having been made in the conditions of said mortgage securing said issue of bonds, the said Massachusetts Loan and
77 Trust Company duly filed its bill of foreclosure in the United States Circuit Court for the District of Minnesota and the Third Division thereof, on the fourteenth day of December, 1900, and that on said day a writ of subpoena was duly issued out of said United States Circuit Court and served upon the said defendant corporation. That such proceedings were duly had in said cause, that on said day a receiver was appointed of all the property of said defendant. That said receiver accepted the said trust, and at once entered into possession of said property and retained the same in his possession until the sale of the same under foreclosure, as hereinafter alleged:

That thereafter such proceedings were duly had that on the tenth day of April, 1901, a decree of foreclosure was duly entered in said cause so pending in said United States Circuit Court, wherein among other things it was adjudged that the full amount of said bonds, to wit, the said sum of $492,000, together with interest thereon, was due and payable, and it was further adjudged that unless within five days from the date of said decree the amount due thereon should be paid; that all of said property should be sold at public auction by a special master appointed by said decree, at the times and in the manner provided by said decree, and that such sale should be made without redemption; that said sum nor any part of the same was not paid; and pursuant to said decree, and on the twenty-fifth day of May, 1901, all of the property of said defendant corporation, of every kind and nature and wheresoever situated, was sold by said special master, and on the twelfth day of June, 1901, the said sale was by said United States Circuit Court duly confirmed, and thereafter the said special master, the said Massachusetts Loan and Trust Company and said Minnesota Thresher Manufacturing Company joining therein, executed and delivered to such purchaser a deed covering, conveying, transferring, and setting over to such purchaser all of the property of said defendant, real, personal, and mixed of every kind and nature, and wheresoever situated, and said purchaser took possession of said property and paid the purchase price therefor.

That by reason of such foreclosure sale the defendant has no property whatsoever out of which the judgment of the plaintiff or any part of the same can be paid or satisfied.

5. Plaintiff further alleges that under its charter the authorized capitalization of the defendant, Minnesota Thresher Manu-
78 facturing Company, is $7,000,000, to wit: $4,000,000 par value of preferred stock and $3,000,000 par value of common stock, each of said issues of stock being divided into shares of $50 each.

That of said $4,000,000 authorized issue of preferred stock there has been issued and is now outstanding 27,967 shares of $50 each; that of said authorized issue of $3,000,000 of common stock there has been issued and is now outstanding 42,594 shares of the par value of $50 each, and plaintiff alleges that the said stock was not fully paid for by the holders and parties to whom the same was issued.

That hereto attached and marked "Exhibit A" is a schedule showing the holders of all of the preferred stock and the holders of all of the common stock of said defendant outstanding, together with the number of shares of stock held by each of the said stockholders respectively, and said "Exhibit A" also shows the various transfers of preferred and common stock of said corporation at all times since the cause of action of the plaintiff herein accrued, showing the holder of said stock, the number of shares held by him, the date the same was transferred, the party to whom the same was transferred, and the number of shares so transferred, together with the post-office address of the transferrer and the transferree in each case, and that said lists of the present holders of preferred

and common stock of said corporation also show the post-office address of the said stockholders respectively, as plaintiff is informed and believes, and all the recitals and statements contained in said "Exhibit A" are hereby referred to and alleged as part of this complaint as fully as though herein set forth at length.

6. Plaintiff further avers that in addition to the judgment so held by this plaintiff against said defendant, said defendant is indebted in other and large sums of money to various persons and corporations, as plaintiff is informed and believes, which said indebtedness aggregates, as plaintiff is informed and believes, a sum in excess of $300,000, and this action is brought by plaintiff on its behalf and on behalf of all of the creditors of said defendant who may intervene and become parties hereto.

7. Plaintiff further avers that plaintiff is without remedy to secure its said claim or any part of the same, and that all the other creditors of said defendant are without remedy to secure their said claims, except by and through the appointment of a receiver of said defendant, with authority to sue for and enforce the
79 liability of the stockholders of said defendant created by the constitution and laws of the State of Minnesota, and the various amounts unpaid upon the said stock.

Wherefore, plaintiff prays that this Honorable Court may sequestrate the stock, property, things in action, and effects of said defendant, said Minnesota Thresher Manufacturing Company, and that a receiver of said defendant corporation may be appointed in this cause, with authority to take into possession all of the property and effects of said defendant, and with authority to sue for, recover, and receive the amounts due from the various stockholders of said defendant corporation wherever the same may be, and whether said stockholders are within the jurisdiction of the courts of Minnesota or otherwise, and that said receiver be given such further powers, and that such other and further duties be imposed on him as to the Court may seem desirable and proper, and that the funds collected or received by said receiver, including the sums collected by him from such stockholders, be distributed among the various creditors of said defendant corporation entitled thereto, and that plaintiff have such other and further relief as to this Court may seem just and equitable.

DAVIS, KELLOGG & SEVERANCE,
Plaintiff's Attorneys, Merchants National Bank Building, St. Paul, Minn.

STATE OF MINNESOTA, *County of Ramsey, ss:*

Kenneth Clark came before me personally, and, being duly sworn, doth say that he is the president and an officer of plaintiff in the above entitled action, that the foregoing pleading is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

KENNETH CLARK.

Subscribed and sworn to before me this 14th day of August, A. D., 1901.

[NOTARIAL SEAL.] C. A. SEVERANCE,
Notary Public, Ramsey County, Minnesota.

Endorsed: 6409. Original. District Court, Washington County. Merchants National Bank of St. Paul *v.* Minnesota Thresher
80 Manufacturing Company. Summons and Complaint. Davis, Kellogg & Severance, attorneys for plaintiff. Merchants National Bank Building, St. Paul, Minn. Filed Aug. 17, 1901. A. K. Doe, clerk.

STATE OF MINNESOTA, *County of Washington*, *ss:*

I hereby certify and return that on the 15th day of August, 1901, at the city of Stillwater, State of Minnesota, I served the within summons and complaint upon the defendant Minnesota Thresher Manufacturing Company, by handing and leaving a correct copy thereof with E. D. Buffington the secretary of said company.

Dated this 15th day of August, 1901.

GRANVILL W. SMITH,
Sheriff of Washington County, Minn.
By IGNATIUS FAZENDIN, *Deputy.*

Sheriff's fees	1.00
Mileage	.20
	1.20 Paid.

Filed Aug. 17, 1901.
A. K. DOE, *Clerk.*

Eleventh. E. D. Buffington, on whom the summons in said action was served, was a creditor of said company in the sum of $65,725.50, and gave no notice of the service of said summons upon him to the directors of the company, or to any other officer of the company before the decree appointing the receiver therein was made, and neither the directors nor any other officer of the company had any knowledge of the bringing of said action before the order of sequestration and appointment of receiver therein hereinafter referred to was made by said District Court. But the directors were aware that creditors of said company had declared their intention to attempt to enforce the individual liability of stockholders by suit.

Article 1 of the By-laws of said Minnesota Thresher Manufacturing Company provides as follows:

Board of Directors.—The government and management of the affairs of this corporation shall be vested in a Board of Directors composed of not exceeding thirteen stockholders, who shall be elected annually by ballot by the stockholders at the annual meeting.

81 Article X. of the By-laws provides for the officers and their election, and is as follows:

Officers and their Election.—The officers may consist of a President, Vice-President, General Manager, Secretary, Assistant Secre-

tary, Treasurer, and Auditor, who shall be chosen by the Board of Directors at the regular annual meetings of the Board. Said officers shall hold their respective offices for one year or during the pleasure of the Board of Directors, and until their successors are duly elected and qualified, and their compensation shall be fixed by the Board of Directors or the Executive Committee. In case of no election as herein provided, the same may be had at any meeting of the Board.

Said officers shall give such bonds for the faithful performance of duty as the Board of Directors shall direct. All elections shall be by ballot.

The duties of the Secretary were provided for in Article XIV. of the By-Laws, which is as follows:

Duties of the Secretary.—It shall be the duty of the Secretary to attend the meetings of the Board of Directors and of stockholders when met for the transaction of business, to keep an accurate record of all their proceedings, and to have charge of the records and papers of the corporation. He shall issue and sign all certificates of stock as Secretary, and perform such other duties as are usually incident to the office.

Mr. E. D. Buffington was elected Secretary of the company at the annual meeting of the Directors held at the office of the company in Stillwater, Minn., on June 18, 1890; and was again elected Secretary on June 17, 1891; and was again elected Secretary on June 22, 1892, at the annual meeting of the Directors of the company in Stillwater, Minn.; and on the same date at the office of the company, by vote of the stockholders, the following persons were elected directors of the company:

Henry D. Hyde, Boston, Mass.
D. N. Morgan, Bridgeport, Conn.
H. J. Crippen, Concord, N. H.
F. A. Osborn, Boston, Mass.
H. C. Fogle, Stillwater, Minn.
W. W. Blackmar, Boston, Mass.
E. D. Buffington, Stillwater, Minn.

82 This meeting, on June 22, 1892, was the last meeting of the stockholders of the company in which there was enough stock or bonds represented to constitute a quorum, and no election of directors was held by stockholders subsequent to said June 22, 1892; but, from time to time, as they died or resigned, others were elected to fill their places.

The last meeting of the directors of the company was held on June 29, 1901, when the following named persons were the directors of the company:

Stephen M. Crosby, of Boston, Mass.
William M. Mason, of Boston, Mass.
Benjamin D. Hyde, of Boston, Mass.
Everett Flint Damon, of Boston, Mass.
G. E. Clifford, of Boston, Mass.
E. D. Buffington, Stillwater, Minn.

Article IX. of the By-Laws provides for the meetings of directors as follows:

Meetings of Directors.—"The annual meetings of the Board of Directors shall be held on the same day and after the adjournment of the annual meeting of the stockholders in each year or at the conclusion of any meeting of the stockholders of the company at which the regular annual election has been held.

Special meetings of directors shall be held upon call by the President or by the majority of the members of the board, at such time and place as may be designated in the call, but no meeting of the Board of Directors shall be called upon less than ten days' notice given through the post-office, addressed to their place of residence, or five days' notice given to them in person or by telegraph and similarly addressed.

A majority of the board shall be necessary to constitute a quorum for business at any meeting. In case of a vacancy in the Board of Directors for any cause the board shall have power to fill the same."

Twelfth. That S. Blair McBeath is and in the year 1901 was an attorney-at-law duly admitted to practice in the courts of the State of Minnesota; that from the year 1896 said McBeath was the regular attorney for the Minnesota Thresher Manufacturing Company, and when any summons or other legal process was served upon the company the same was at once turned over to said McBeath
83 for attention; said McBeath acted as attorney for said company in the foreclosure action herein mentioned, and from the date of the deed under the foreclosure decree said McBeath did no further business for said company; E. D. Buffington had been chosen as the general manager of said Minnesota Thresher Manufacturing Company, as well as the secretary of said company, and prior to the commencement of the foreclosure suit hereinafter mentioned and no successor to him in those offices was thereafter chosen, and when the summons and complaint in said action, in which the plaintiff was appointed as receiver, were served on said Buffington, he at once handed the same to said McBeath and requested him to appear for said company in said cause. No other action was taken by said Buffington in regard to this summons, and the same was not brought to the attention of any other director or stockholder. Said McBeath had no other authority to appear; no further instructions were given him, he was not and at no time had been an officer or director of said company, and was engaged as attorney in 1896 and subsequent years only by the general manager and not by resolution of the directors of said Minnesota Thresher Manufacturing Company.

Thirteenth. On the sixteenth day of August, 1901, an order and decree was entered by said District Court in said action as follows:

STATE OF MINNESOTA, *County of Washington:*

District Court, First Judicial District.

* * * * * * *

MERCHANTS' NATIONAL BANK OF ST. PAUL, MINN., Plaintiff,
v.
MINNESOTA THRESHER MANUFACTURING COMPANY, Defendant.

* * * * * * *

The above entitled matter having come before the Court upon the motion of the plaintiff above named for a judgment and decree adjudging that the stock, property, things in action, and effects of said defendant be sequestered, and for the appointment of a receiver of the said defendant, and it appearing to the Court that due notice of said motion was given by serving the same upon the said defendant and upon S. Blair McBeath, its attorney, and the parties hereto having duly appeared, plaintiff by its attorneys, Messrs. Davis, Kellogg & Severance, and the defendant by its attorney, S. Blair McBeath, and evidence having been taken upon the said application and the Court having duly considered said matter, it is therefore

Ordered, decreed and adjudged that the stock, property, things in action, and effects of said defendant be sequestered, and
84 that Theodore R. Converse, of Stillwater, Minn., be, and he is hereby appointed receiver of the said defendant, and of all the property, estates, rights, and interests of said defendant of every sort or nature, either in law or equity, and with full authority to sue for, collect, recover, compromise, and settle any and all stockholders' liability that may exist under the constitution and laws of the State of Minnesota or otherwise, and to prosecute and sue for the amount of such liability or any assessments that may be made by this Court on account thereof for the satisfaction of the claims of the creditors of said defendant, and of the expenses of the administration of this trust, including the fees, allowances, and expenses of said receiver and his counsel, with full power and authority to sue for and enforce the collection of any assessments or stockholders' liability either in the courts of the State of Minnesota or the courts of any other State or territory or the courts of the United States, sitting in any State or territory of the United States, and with full power and authority to prosecute appeals or sue out writs of error in any such suits or causes that may be so instituted by said receiver for the collection of such assessments and stockholders' liability, and, in general, to do and perform all acts that in the opinion of said receiver or that he may be advised are needful or proper for the enforcement and collection of such assessments and stockholders' liability in any of the courts of the United States or of the various States and territories of the United States.

In addition thereto the said receiver is hereby vested with all the usual and ordinary powers of receivers in equity, and in addi-

tion to the specific authority hereinbefore given, said receiver is directed to seize and take into his possession, sue for, and recover any and all property of every sort and nature possessed by said corporation or to which it is entitled, if he is able to learn of any such property, and the officers and directors of said corporation, and each of them, are hereby ordered and directed to turn over to said receiver all books of account, stock books, stock registers, record and minute books, and all other records, property, and papers of said defendant of every sort and nature that may be in the possession of said directors or officers, or any of them, and said defendant corporation and its officers and directors, and all persons claiming by, through or under them, are hereby enjoined to refrain from interfering in any way with the possession of said property, records or books in said receiver, and the said receiver is hereby vested with full power
85 and authority at his discretion to employ and fix the pay and compensation of all such attorneys, agents, employees as shall in his opinion be necessary to aid him in the proper discharge of his duties as such receiver, and the plaintiff herein and all creditors who may intervene in this cause are hereby instructed to make all such assignments and to do and perform all such acts as may be required by said receiver to aid in the administration of said trust, and to assist in the enforcement of such stockholders' liability, in any of said jurisdictions; and said receiver is directed to hold all funds that may come into his hands by virtue of his said receivership or any acts done thereunder, and all moneys which he may receive by or through the enforcement or collection of such stockholders' liability, or any part thereof, until the further order of this court, except that said receiver is authorized out of any such funds to pay, first the current expenses incident to the creation or administration of this trust, including the compensation of such attorneys, agents, and employees as he may employ to aid him in administering the said trust and enforcing the said assessments and stockholders' liability.

It is further ordered that said receiver shall within twenty days from the date of this order file with this Court a bond in the penal sum of $5,000 with one or more sureties to be approved by this Court, conditioned for the faithful performance of his duties as such receiver, and for duly accounting and paying over the moneys that may come into his hands as such receiver, this Court hereby reserving the right to increase the amount of said bond from time to time, as may be deemed by the Court expedient.

It is further ordered that said receiver shall from time to time file a report of his doings as such receiver with this Court, and the Court reserves the right to make such further orders and directions to said receiver at any time as in the opinion of the Court may be proper or necessary.

Dated Aug. 16, 1901.

By the Court,

F. M. CROSBY,
District Judge.

Endorsed: 6409. Original. District Court, Washington County. Merchants' National Bank of St. Paul *v.* Minnesota Thresher Manufacturing Company. Order appointing receiver. Davis, Kellogg and Severance, attorneys for plaintiff. Merchants' National Bank Building, St. Paul, Minn. Filed Aug. 17, 1901. A. K. Doe, clerk.

86 *Fourteenth.* The plaintiff gave bond as such receiver, which bond was approved by one of the judges of said Court and filed in said action; and the plaintiff qualified and entered upon the performance of his duties as such receiver, and ever since has acted, and now is acting, as such.

Fifteenth. On the third day of September, 1901, said District Court made and entered an order with regard to the proof of claims against said company as follows:

STATE OF MINNESOTA, *County of Washington:*

District Court, First Judicial District.

* * * * * * *

MERCHANTS' NATIONAL BANK OF ST. PAUL, MINN., Plaintiff,

v.

MINNESOTA THRESHER MANUFACTURING COMPANY, Defendant.

* * * * * * *

Upon reading and filing the petition of Theodore R. Converse, receiver of the above named defendant, praying that a time be fixed within which the creditors of said defendant shall be required to appear, exhibit their claims, and become parties to this action, and upon duly considering the said matter,

It is ordered, That the term of six months from and after the first publication of this order is limited and fixed as the time within which the creditors of said defendant shall appear, exhibit their claims, and become parties to the said action, and, in default thereof, it is ordered that any creditor failing to appear as aforesaid shall be precluded from the benefit of the judgment which shall be rendered in this action and from any distribution which shall be made under said judgment

It is ordered that notice of this order shall be given by publishing said order once in each week for three successive weeks in the Stillwater "Daily Gazette," a daily newspaper printed and published at the city of Stillwater, said county and State; and it is further ordered

87 that a copy of this order shall be mailed by the said receiver, postage prepaid, addressed to the creditors of said corporation at their places of residence so far as the same may be known to said receiver, within ten days from this date.

Dated Sept. 3, 1901.

F. M. CROSBY,
District Judge.

Endorsed: 6409. Original. District Court, Washington County. Merchants' National Bank *v.* Minnesota Thresher Manufacturing Company. Order requiring creditors to intervene. Filed Sept. 3, 1901. A. K. Doe, clerk.

After the entry of said order, it was published as required therein, and within the time therein limited, and in the manner therein prescribed, the first publication being made September 13, 1901, but was not otherwise served upon the defendants and no actual notice thereof was received by them, and certain creditors of said Thresher Company became parties to said action as intervenors therein, and exhibited therein their claims and demands against said Thresher Company, and proved the same, and after hearing had in said action said claims of such creditors were allowed and proved to the amount of four hundred forty-three thousand seven hundred and fifty-two dollars and seventeen cents ($443,752.17), which included interest to Dec. 11, 1902.

That said indebtedness, except certain items which had been added from time to time for interest, was incurred prior to the year 1899, and is largely represented by notes, which were renewed from time to time; that the claim of the estate of Henry D. Hyde, which was allowed and proved for $139,883.15, was incurred, except certain amounts for interest, long prior to the year 1899, but did not become an obligation to the estate of Henry D. Hyde until subsequent to the year 1899, when the notes which represented this indebtedness, and which were endorsed and guaranteed by the late Henry D. Hyde, were paid by his executors.

Sixteenth. On the sixteenth day of April, 1902, said receiver filed in said district court the following petition for an assessment upon the parties liable as stockholders of the Minnesota Thresher Manufacturing Company:

88 STATE OF MINNESOTA, *County of Washington:*

District Court, First Judicial District.

* * * * * * *

MERCHANTS' NATIONAL BANK OF ST. PAUL, MINN., Plaintiff,

v.

MINNESOTA THRESHER MANUFACTURING COMPANY, Defendant.

Petition.

* * * * * * *

And now comes Theodore R. Converse, receiver of the above named defendant, and respectfully represents to this honorable court and states that heretofore, to wit, on the sixteenth day of August, 1901, this petitioner was, in the above entitled cause, appointed receiver of all the property, estates, rights, and interests of the above named defendant, of every sort or nature, either in law or in equity, and with full authority and directions to sue for, collect, recover, compromise, and settle, any and all stockholders' liability that may

exist under the constitution and laws of the State of Minnesota or otherwise, and to prosecute and sue for the amount of such liability or any assessment that may be made by this Court on account thereof, for the satisfaction of the claims of the creditors of said defendant, and of the expenses of the administration of his said trust, including the fees, allowances and expenses of said receiver and his counsel, with full power and authority to sue for and enforce the collection of any assessments or stockholders' liability either in the courts of the State of Minnesota or the courts of any other State or territory, or the courts of the United States sitting in any State or territory of the United States, and with full power and authority to prosecute appeals or sue out writs of error in any such suits or cases that may be so instituted by said receiver for the collection of such assessments and stockholders' liability, and in general to do and perform all acts that in the opinion of said receiver or that he may be advised are needful or proper for the enforcement and collection of such assessments and stockholders' liability in any of the courts of the United States or of the various States and territories of the United States, and in addition thereto your petitioner as such receiver was by the order and decree of this Court vested with all the usual and ordinary powers of receivers in equity, and was directed to seize and
89 take into his possession, sue for and recover any and all property of every sort and nature possessed by said corporation.

Second. Your petitioner further shows that this action was instituted by the plaintiff as a judgment creditor of said defendant, under the provisions of chapter 76 of the General Statutes of the State of Minnesota for the year 1894, and amendments thereto, that said plaintiff duly recovered on the sixth day of May, 1901, in the district court for Ramsey Co., Minn., a judgment for the sum of $2,938.07, which said judgment was duly docketed in said Court on said day, and was also docketed in this Court.

That an execution directed to the sheriff of said Ramsey Co. was duly issued and delivered to the said sheriff, who made return thereon, that after diligent search and inquiry he was unable to find any property of the defendant in his said county, and hence returned said execution wholly unsatisfied.

That a certain other execution was duly issued out of said Court upon said judgment, directed to the sheriff of said county of Washington, and that said sheriff duly returned that after diligent search and inquiry he was unable to find any property of said defendant in his said county, and hence returned said execution wholly unsatisfied.

That after the issuance and return of said two executions, the above entitled cause was commenced in this Court, and after the commencement of said cause your petitioner, as hereinbefore stated, was duly appointed by this Court as such receiver, with the powers hereinbefore enumerated.

Third. Your petitioner further avers that on the fifth day of January, 1888, said defendant made, executed, and delivered to the Massachusetts Loan and Trust Company, a corporation organized and existing under and by virtue of the laws of the State of Massa-

chusetts and having authority to act as trustee of mortgage indentures, a certain mortgage or deed of trust, wherein and whereby the said defendant sold, assigned, transferred, set over, mortgaged, and conveyed unto the said trust company all its real estate, appurtenances, leasehold interests, buildings, machinery, tools, patterns, fixtures, materials, articles manufactured, unmanufactured or in process of manufacture, stocks of other companies and corporations, cash in hand, book accounts, letters patent, choses in action, bills receivable, chattels real and personal, and all other assets, property, estates, rights, claims, and demands of every name and na-
90 ture either in law or in equity and wherever situated, and also all lands, estates, both real and personal property, assets, chattels real and personal, goods manufactured, unmanufactured, or in process of manufacture, buildings, machinery, tools, patterns, fixtures, materials, cash, book accounts, letters patent, choses in action, bills receivable, and all other claims, rights, or demands of whatsoever name or nature, or wherever situated, either in law or in equity, which might thereafter come into the possession or control of said defendant company, or to which said company might become entitled, the intent of said mortgage, as therein expressed, being that said mortgage or deed of trust should also cover and convey the property of said defendant acquired in the future after the execution and delivery of said mortgage, as well as all property then owned, so long as any of the bonds secured by said mortgage are outstanding and uncollected.

And your petitioner avers that the said mortgage or deed of trust was made to secure an issue of 1,600 bonds of $1,600 each, dated Jan. 2, 1888, and due Jan. 1, 1908, with interest at the rate of five per cent. per annum, payable semi-annually on the first days of January and July of each year at the office of the said Massachusetts Loan and Trust Company in Boston, Mass.; and that said bonds were at once certified by the trustee, issued and sold to divers and sundry persons, and except as a portion of the same were thereafter retired as hereinafter mentioned, the same continued to be secured by said mortgage above set forth.

That said mortgage or deed of trust was recorded in the office of the register of deeds of the county of Washington, State of Minnesota, on the fifth day of January, 1888, in Book "Z" of Mortgages, pages 436 *et seq.*, and was also filed at the same time in the office of the clerk of the city of Stillwater, where the personal property covered by the same was situated.

That after the execution and negotiation of said bonds and the execution, delivery, and recording of said mortgage, divers and supplemental mortgages were made from time to time by the said defendant to said Massachusetts Loan and Trust Company, covering all of its property owned at the time of the execution of the same, or thereafter to be acquired by said defendant, all of said supplementary mortgages being made likewise to secure the payment of said issue of mortgage bonds above set forth.

That from time to time the said defendant paid off and re-
91 tired certain of said mortgage bonds, to wit, eleven hundred and eight of the same, leaving outstanding and unpaid four hundred and ninety-two of said bonds of the par value of $492,000.

That it being claimed that default was made in the conditions of said mortgages, said Massachusetts Loan and Trust Company did on the fourteenth day of December, 1900, file in the office of the United States Circuit Court for the district of Minnesota, third division, its certain foreclosure bill, in which bill of complaint there was duly set forth the making and delivery of said mortgage and the bonds secured by the same, and also the making and delivery of the said supplementary mortgages, and it was prayed in said bill of complaint, among other things, that the mortgaged property, including all the property, real, personal, and mixed, as hereinbefore described, might be sold under the orders and decree of said Court for the satisfaction of the amount due upon said bonds, and on said fourteenth day of December, 1900, after the filing of said bill of complaint and the commencement of such foreclosure suit, such proceedings were duly had, that a receiver was appointed of all the property of said defendant, which receiver accepted his said trust and entered into possession of all of the said property of every sort and nature, and continued in the possession thereof until the sale of said property under foreclosure, as hereinafter set forth.

That thereafter and on the tenth day of April, 1901, such proceedings were duly had in said cause so pending in said United States Circuit Court, that a decree of foreclosure was duly entered therein, wherein it was adjudged and decreed that the defendant, Minnesota Thresher Manufacturing Company, pay or cause to be paid on or before April 15, 1901, to Howard S. Abbott, as special master appointed in and by said decree, for the benefit of said Massachusetts Loan and Trust Company, the complainant in said cause, the sum of $492,000 together with interest thereon at five per cent. per annum from July 1, 1900, and that in default of such payment all the said property and premises described in said foreclosure decree and owned by defendant should be sold at public auction.

That in and by said foreclosure decree it was, among other things, adjudged and decreed that all of the property of the said defendant, real, personal and mixed, including accounts receivable, bills receivable, and all other choses in action, claims and demands of every sort or nature, were covered by the lien of said mortgages, and in case of such default in the payment of said sum
92 within the time limited by said decree, it was ordered, adjudged and decreed that the same and the whole thereof be sold at public auction for the satisfaction of said mortgage indebtedness, and that said sale of such property be made as an entirety in one lot and parcel without redemption.

That neither the said defendant nor any other person paid or caused to be paid the said sum of $492,000 and interest, or any part thereof, either on or before said April 15, 1901, or at any other

time, and that in consequence thereof and under and in accordance with the provision of said decree, said special master fixed as the time and place of said sale the eighteenth day of May, 1901, at the hour of twelve o'clock noon at the front door of the county court house of the county of Washington, in the city of Stillwater and State of Minnesota, and that the notice of such sale was given by said master as provided in said decree.

That on said date the said sale was adjourned until the twenty-fifth day of May, 1901, at which time all of the said property was, as provided in said decree, duly offered for sale, struck off, and sold for the sum of $125,000, and such proceedings were thereafter had that the said sale was by said United States Circuit Court, duly confirmed, and after such confirmation deeds of conveyances were made by said special master, and said Massachusetts Loan and Trust Company, trustee under said mortgages, and the defendant, Minnesota Thresher Manufacturing Company, as provided in said decree, which said deeds were delivered to the purchaser at said foreclosure sale, and said purchaser took possession of the property and the whole thereof.

Fourth. That by reason of the said mortgages and the foreclosure thereof, and the said sale and conveyance of all the said property of said defendant, the said defendant is wholly without assets or property of any sort or nature out of which the claims of the creditors of the said defendant or any part of such claims can be paid, collected or realized.

Fifth. That after the appointment of your petitioner as such receiver, he duly made his petition to this Court, praying, among other things, that an order be made fixing a time within which the creditors of the defendant should be required to appear, exhibit their claims, and become parties to this cause, or be precluded from the benefit of the judgment which will be rendered in this action, and from any distribution which may be made under said judgment.

That upon said petition this Court made its order on the
93 third day of September, 1901, in and by which, among other things, it was ordered that the term of six months from and after the first publication of such order was limited and fixed as the time within which the creditors of defendant should appear, exhibit their claims, and become parties to this action, and in default thereof it was ordered that any creditor failing to appear as aforesaid should be precluded from the benefit of the judgment which will be rendered in this action, and from any distribution which shall be made under said judgment; and it was further ordered that notice of said order should be given by publishing said order once in each week for three successive weeks in the Stillwater "Daily Gazette," a daily newspaper printed and published at the city of Stillwater, said county and State, and that a copy of said order be mailed by your petitioner as receiver, postage prepaid, addressed to the creditors of said corporation at their place of residence, so far as the same may be known to said receiver, within ten days from said date.

That your petitioner duly caused said order to be published, as provided therein, and did within the time limited by said order mail to the creditors of said defendant, so far as known to him, at their respective post-office addresses, postage prepaid, copies of said order.

That, pursuant to the said notice, certain of the creditors of said defendant, whose claims aggregate $381,725.79 and interest, have filed their complaints of intervention herein.

That a list of the said creditors who have so intervened, together with the amounts of their several claims, and the date from which interest is due thereon, is hereto attached marked "Exhibit B," and made a part of this petition. Said interest is to be paid at the rate of six per cent. per annum.

That the date fixed by said order for creditors to intervene is now passed, and that no other creditors have signified their intention of applying to this Court for leave to intervene, with the exception of the First National Bank of Oxford, N. Y., a creditor of said defendant, which said creditor has appeared in said matter, and has asked to have until the fifteenth day of April, 1902, in which to file a complaint of intervention.

That your petitioner has made a careful investigation of the indebtedness of said defendant, and has ascertained that in addition to the claims of such creditors who so intervened, the said defendant is indebted in the sum of $23,679.15 and interest,
94 that said sum includes the claim of said First National Bank of Oxford, N. Y.

That hereto attached marked "Exhibit C," and made a part hereof, is a list of the said creditors who have not intervened in said cause, together with the amounts of their respective claims and the dates from which interest is to be computed on the same, which said interest should also be computed at the rate of six per cent. per annum.

And your petitioner avers that the said two lists, "Exhibits B and C," include all the claims and demands against the said defendant corporation, and truthfully represent and show all of the indebtedness of said corporation outside of the balance of the mortgage indebtedness of said corporation, for the recovery of which, however, no action can be maintained against the stockholders of said defendant by reason of the provisions of the bonds representing such mortgage indebtedness, as your petitioner is advised.

Sixth. Your petitioner further avers that the defendant corporation was organized under and pursuant to the constitution and laws of the State of Minnesota, and under said constitution and laws the stockholders of said corporation are liable to your petitioner as such receiver, to an amount not exceeding the par or face value of the stock held by said stockholders respectively, for the satisfaction of the claims of the creditors of said defendant corporation.

That your petitioner has examined the stock books of the said defendant and the other records of said defendant, and from the same has ascertained that said defendant corporation has issued stock of two classes, denominated "Preferred Stock" and "Common

Stock;" that each of said classes of stock is divided into shares of the par value of $50.00 each.

That of such preferred stock there have been issued and are now outstanding 27,967 shares.

That of the common stock of said corporation there have been issued and are now outstanding 42,594 shares.

That certain of the stock, both preferred and common, has from time to time since the organization of said defendant corporation been transferred.

That certain of the stock is held in the names of trustees, and your petitioner has investigated as to the beneficiaries under such trusts;

95 your petitioner has ascertained the names of the parties for whom said stock was originally held by said trustees, and for whom it is still held so far as the records of said trusts are concerned, but as to any transfers that may have been made or attempted to be made by said beneficiaries, your petitioner has no information sufficient to form a belief.

Your petitioner further avers that lists of the stockholders of said defendant, with the number of shares standing in the names of said stockholders respectively on the records of the defendant corporation, are attached to the complaint herein, but that since the said stock was so obtained by said parties certain of said stockholders have died, and said stock is now owned by their heirs and representatives.

That your petitioner shortly after his appointment commenced a thorough investigation as to the stockholders of said defendant, and as to their solvency and ability to respond to such assessment as this Court may order.

That owing to the great number of said stockholders and the fact that they are scattered through many States, it has been necessary for your petitioner to employ a number of people to conduct these examinations and to ascertain as to the probable solvency of the heirs of deceased stockholders, as well as of the stockholders who are of record and who are still living; that owing to the great number of such stockholders it is impossible to set forth in detail the situation as to each of the same in a petition, but your petitioner avers that upon the hearing of the application for an assessment herein your petitioner will lay before the Court very full and detailed information as to such stockholders and their ability to pay such assessment as may be ordered by the Court.

That of the said stockholders of record who are still living and heirs of deceased stockholders, the investigations made by your petitioner up to this date show that the holders of 18,801 shares of preferred stock and 9,877 shares of the common stock are probably good and able to respond to such assessment as this Court may levy for the satisfaction of the claims of creditors.

That in addition to the stock included in said amounts there are 3,548 shares of common stock included in certain stock standing in the name of trustees, the beneficial holders of which your pe-

titioner believes to be good, provided there have been no transfers of such beneficial interest which would excuse the original beneficial holders thereof from liability.

That certain of the holders of the balance of the stock of
96 said defendant not included in the amounts above stated might possibly be able to respond to assessments, but the bulk of the balance of the same is held by persons who are financially irresponsible.

That of the stockholders regarded by your petitioner as good, there are certain stockholders whose holdings are very small and who live in remote parts of the country, so that the expense of collecting the stockholders' liability would be so great as practically to eat up the assessment; that a few of such stockholders live in States where the judicial decisions are unfavorable to the collection of stock liability, but in the opinion of your petitioner the holders of nearly all of the stock herein classified as good can be made to respond to any assessment that may be made by this Court.

Your petitioner further avers that only a small portion of the stock held by responsible stockholders is owned in the State of Minnesota; the greater part of the same is owned in New England, particularly in the State of Massachusetts.

Your petitioner further avers that he has already incurred a very considerable expense in conducting the examination necessary to properly advise this Court as to the situation regarding said stockholders and their solvency, and that it is impossible at the present time to determine the expense of administering this trust and collecting the liability of the stockholders for the benefit of the creditors herein, but your petitioner avers that owing to the fact that legal proceedings will have to be instituted in many different States and in many different counties of different States and against so large a number of stockholders, and in view of the fact that the amount involved in such litigation is large and the responsibility of the same is great, that in considering the amount for which assessment should be levied a very considerable sum must necessarily be added for the expense of collection and administration.

For the reasons hereinbefore set forth, and inasmuch as there is no property whatsoever of any kind or nature of said defendant from which said claims and demands against the defendant can be made, except from such stockholders' assessments, your petitioner prays that for the purpose of providing funds for the payment of the expenses of this receivership in the enforcement of such stock liability, and for the payment of the indebtedness of said defendant, as the same may be proved and allowed in this action and proceeding, this
97 Court, by its order herein, may direct and levy a ratable assessment upon all parties liable as stockholders of said corporation, or upon or on account of any shares of stock of said corporation for such amount, proportion, or percentage of the liability for or on account of each share of stock, as the Court shall deem proper after hearing, as by law provided, and to that end your petitioner prays that this Court, by its order, may appoint a time for hearing this petition and the application herein contained, and direct

such notice of such hearing to be given as to the Court may seem proper.

THEODORE R. CONVERSE, *Petitioner.*

DAVIS, KELLOGG & SEVERANCE,
Attorney- for Receiver.

STATE OF MINNESOTA, *County of Ramsey, ss:*

Theodore R. Converse came before me personally, and being duly sworn, doth say that he is the petitioner in the above entitled action; that the foregoing pleading is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

THEODORE R. CONVERSE.

Subscribed and sworn to before me on this 16th day of April, A. D. 1902.

[NOTARIAL SEAL.] C. W. G. WITHEE,
Notary Public, Ramsey Co., Minn.

Endorsed: 6409. Original. District Court, Washington County. Merchants National Bank of St. Paul, Minn., *v.* Minnesota Thresher Manufacturing Company. Petition of Theo. R. Converse. Filed April 16, 1902. A. K. Doe, clerk.

Seventeenth. The number of shares of preferred stock that had been issued, and were outstanding, at the time of said petition for the assessment, was 27,967 shares, and the number of shares of common stock that had been issued and were outstanding at the same time, was 42,594, making a total number of shares outstanding at the time the petition for the assessment was filed of 70,561.

98 *Eighteenth.* On the twenty-second day of December, 1902, the Court made the following order of assessment upon said petition of the receiver, and in making said order the Court included as a basis of the assessment the expenses stated in the petition for the assessment.

STATE OF MINNESOTA, *County of Washington:*

District Court, First Judicial District.

* * * * * * *

MERCHANTS NATIONAL BANK OF ST. PAUL, MINN. (a Corporation), Plaintiff,

v.

MINNESOTA THRESHER MANUFACTURING COMPANY (a Corporation), Defendant.

* * * * * * *

Order.

This matter having come on to be heard at a special term of this Court, held at the court house, in the city of Stillwater, in said county

and State, on Tuesday, the tenth day of June, 1902, at ten o'clock in the forenoon, pursuant to an order made and entered herein on the sixteenth day of April, 1902, upon the petition of Theodore R. Converse, receiver of the said defendant corporation, which petition was duly filed with the clerk of this Court, praying among other things that this Court might by order herein direct and levy a ratable assessment upon the parties liable as stockholders of said defendant corporation, for such amount, proportion, or percentage of the liability for or on account of each share of said stock, as the Court should deem proper after hearing as by law provided, pursuant to the provisions of chapter 272 of the General Laws of Minnesota for the year 1899; and said receiver having duly appeared at said special term of court on the said tenth day of June, 1902, in support of said petition of said receiver, by Messrs. Davis, Kellogg & Severance, his attorneys; and Messrs. Koon, Whelan & Bennett, Charles P. Searle, and J. H. Benton, Jr., having appeared in opposition thereto on behalf of the following named stockholders of said defendant, to wit:

D. N. Morgan, of Bridgeport, Conn.; George E. Carter, of Boston, Mass.; Dime Savings Bank, of Norwich, Conn.; Hingham National Bank, of Hingham, Mass.; Mechanics National Bank, of Worcester, Mass.; Great Falls National Bank, of Great Falls, N. H.;
99 Naumkeag National Bank, of Salem, Mass.; Home National Bank, of Brockton, Mass., and the Second National Bank of Bangor, Me., and said counsel for objecting stockholders having filed a written objection and answer to the said petition, to which a reply was duly filed by the counsel for said receiver; and it appearing to the satisfaction of the Court that copies of said order dated April 16, 1902, were duly published, mailed, and served in the manner herein prescribed, and that due notice of said hearing was duly given by said receiver to the defendant and to each stockholder of record of the defendant, as directed by said order; and the said matter having been adjourned from time to time, and having come on for final hearing on Wednesday, the tenth day of December, 1902, at which time evidence was introduced by the receiver and by said objecting stockholders, and the said matter having been orally argued to this Court by M. B. Koon, Esq., one of the counsel for said objecting stockholders, on behalf of said stockholders, and by C. A. Severance, Esq., one of the attorneys for said receiver, on behalf of said receiver; and it appearing to the satisfaction of the Court after hearing and considering the proofs and evidence introduced at said hearing by and in behalf of said parties respectively and the arguments of counsel, that it is necessary and proper that an assessment of eighteen dollars ($18.00) on each share of capital stock of said corporation be directed and levied herein against all parties liable as stockholders of said defendant.

Now, therefore, It is ordered: That an assessment of thirty-six per cent. (36%) of the par value of each share of the capital stock of said defendant, to wit: the sum of eighteen dollars ($18.00) on each share thereof be and the same is hereby assessed upon and against each and every share of said capital stock, and upon and against the person, corporation, or party liable as a stockholder of

defendant for, upon, or on account of such shares of stock, and that each and every person, corporation, or party liable as such stockholder of said defendant be, and he is hereby directed to pay to Theodore R. Converse, receiver of said defendant, at his office in the city of Stillwater, county of Washington, in said State of Minnesota, within thirty (30) days after the date of this order, the said sum of eighteen dollars ($18.00) for and on account of each and every share of said stock for or upon which said person, corporation, or party is liable as a stockholder of said defendant as aforesaid;

Ordered further, That said receiver forthwith proceed to
100 collect the several amounts due from the several persons, corporations, and parties liable as stockholders of said defendant under the terms of this order, and hold the amount thus collected subject to the further order of this Court herein;

Ordered further: That in case any person, corporation or party liable as a stockholder of said defendant shall fail to pay the amount hereby assessed against the share or shares of stock held or owned by such stockholder, or upon or on account of which he or it may be liable within the time hereinbefore specified, said receiver is hereby directed and authorized to forthwith institute and prosecute such action or actions or other proceedings against such person, persons, corporation or party liable in any court having jurisdiction, whether in this State or elsewhere which said receiver may deem necessary or proper for the recovery of the amount due from such person, persons, corporation or party under the terms of this order;

Ordered further: That said receiver give due notice of this order by mailing a copy of the same within ten days from the date hereof, to each stockholder of said defendant whose name and address is known to said receiver.

By the Court,

W. C. WILLISTON,
District Judge.

Dated Dec. 22, 1902.

Endorsed: 6409. Original. District Court, Washington County. Merchants National Bank of St. Paul, Minn., *v.* Minnesota Thresher Manufacturing Company. Order of assessment upon stockholders. Davis, Kellogg & Severance, attorneys for receiver, Merchants National Bank Building, St. Paul, Minn. Filed Dec. 23, 1903. A. K. Doe, clerk.

Nineteenth. Notice of said last-mentioned order of said District Court of said Washington County was given by this plaintiff as such receiver, as prescribed by said order, and in the manner directed thereby. Certain stockholders of said Thresher Company, other than the defendants, intervened in said last-mentioned action and objected to the issuance of said last-mentioned order and the levy of any assessment, and duly prosecuted an appeal from said last-mentioned order to the Supreme Court of said State of Minnesota. Said appeal was heard and considered by said Supreme Court; and at the

April term, A. D. 1903, of said Court, judgment was rendered
101 and entered in said matter in and by said Supreme Court, determining and adjudging that the said order so appealed from be in all things affirmed. The copy of said opinion is as follows:

13479.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1903.

No. 123.

In re Receivership of the Minnesota Thresher Manufacturing Company, THEODORE R. CONVERSE, Receiver of the Minnesota Thresher Manufacturing Company, Respondent,

v.

D. N. MORGAN ET AL., Appellants.

Syllabus.

1. The articles of an alleged manufacturing corporation are the sole criterion for determining the intention of the incorporators and the purposes for which the corporation was organized; and unless it fairly appears therefrom that it was organized for the exclusive purpose of engaging in manufacturing and such incidental business as may be reasonably necessary for effectuating the purpose of its organization, its stockholders are liable for its debts to the amount of stock held by them.
2. Rule applied, and held that the stockholders of the defendant corporation are so liable for its debts.

Order affirmed.

102 1379.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D., 1903.

No. 123.

In re Receivership of the Minnesota Thresher Manufacturing Company, THEODORE R. CONVERSE, Receiver of the Minnesota Thresher Manufacturing Company, Respondent,

v.

D. N. MORGAN ET AL., Appellants.

Opinion.

This action was commenced in the District Court of the county of Washington by the plaintiff, a judgment creditor of the defendant,

an insolvent corporation, under the provisions of G. S., 1894, c. 76, and a receiver was duly appointed herein. The receiver duly made and filed his petition praying the Court to order, direct, and levy a ratable assessment upon the parties liable as stockholders of the defendant pursuant to the provisions of Laws, 1899, c. 272. The Court, after a hearing on the petition, and on Dec. 23, 1902, made its order assessing each share of the capital stock of the defendant for the sum of $18, and certain of the stockholders appealed from the order. The sole question presented for our consideration and decision is whether the stockholders of the defendant are liable for its debts to the amount of stock held or owned by them as provided by Art. 10, sect. 3, of our State Constitution. Or, in other words, is the defendant a corporation organized for the purpose of carrying on any kind of manufacturing or mechanical business within the meaning of the constitutional provision referred to? The answer to the question depends upon the construction to be given to the articles of association of the defendant, which, so far as here material, are in these words: "The objects for which this corporation is formed are the purchase of the capital stock, evidences of indebtedness issued by it, and the assets of the Northwestern Manufacturing and Car Company, a corporation existing under the laws of the State of Minnesota, or any portion of said capital stock, evidences of indebtedness or assets, and the manufacture and sale of steam engines
of all kinds, farm implements, and machinery of all kinds,
103 and the manufacture and sale of all articles, implements, and
machinery of which wood and iron, or either of them, form the principal component parts, and the manufacture of the materials therein used."

It is manifest from this language that the defendant was not organized for the purpose of carrying on any mechanical business; hence the question is whether it is a manufacturing corporation within the meaning of the constitution. It is important before analyzing the articles of incorporation to determine the rule by which they are to be construed. The rule is to be deduced from the constitutional provision imposing the liability of stockholders for the debts of their corporation, the statute as to the organizing of manufacturing corporations, and the decisions of this Court construing them. The constitution provides that: "Each stockholder in any corporation (excepting those organized for the purpose of carrying on any kind of manufacturing or mechanical business) shall be liable to the amount of stock held or owned by him."

Art. 10, Sect. 3.

And the statute as to the statement of the purposes for which a manufacturing corporation is organized in its articles requires that: "The purpose for which every such corporation shall be established shall be distinctly and definitely specified by the stockholders in their articles of association, and it shall not be lawful for said corporation to direct its operations or appropriate its funds to any other purpose."

G. S., 1894, Sect. 2807.

It is obvious from these provisions that the liability of stockholders for the debts of the corporation is the general rule and their non-liability therefor the exception, and that to bring them within the exception the purpose for which the corporation is organized must be so definitely stated in the articles of association as to fairly show upon their face that the corporation was organized only for the purpose of engaging in the business of manufacturing. And, further, that the actual intention of the incorporators, except so far as it appears on the face of their articles, must be immaterial, for creditors proposing to give credit to the corporation have no other means of determining such intention and whether or not the stockholders are liable for its debts. These premises have been uniformly accepted as correct by this Court in all of its decisions relating to the liability of stockholders for the debts of their corporation. And basing our conclusion upon such decisions we hold that the rule in such cases, by which the articles of incorporation are to be construed, is this: It is immaterial that the corporation was organized under the statute providing for organizing manufacturing corporations, or what the actual intention of the incorporators was, or that the corporation, in fact, carried on only a manufacturing business; but its articles of incorporation are the sole criterion as to such intention and the purposes for which the corporation was organized, and unless it fairly appears therefrom that it was organized for the exclusive purpose of engaging in manufacturing and such incidental business as may be reasonably necessary for effectuating the purpose of its organization, its stockholders are not within the exception to the general rule of constitutional liability of stockholders for the debts of their corporation.

104

State *v.* Thresher Co., 40 Minn. 213.
Mohr *v.* Elevator Co., 40 Minn. 343.
Arthur *v.* Willius, 44 Minn. 409.
Densmore *v.* Shepherd, 46 Minn. 54.
First Nat. Bank of Winona *v.* Plow Co., 58 Minn. 167.
Oswald *v.* Publishing Co., 60 Minn. 82.
St. Paul Barrel Co. *v.* Distilling Co., 62 Minn. 148.
Hastings Malt Co. *v.* Brewing Co., 65 Minn. 28.
Anderson *v.* Iron Co., 65 Minn. 281.
Commercial Bank *v.* Azotine Co., 66 Minn. 413.
Nicollet Bank *v.* Fish-Iver Co., 71 Minn. 413.
Minn. Title Ins. & Trust Co. *v.* Regan, 72 Minn. 431.
Cuyler *v.* City Power Co., 74 Minn. 22.
Gould *v.* Fuller, 79 Minn. 414.
Scnour Mfg. Co. *v.* Church Paint Co., 81 Minn. 294.
Craig *v.* Sisters' Hospital, 93 N. W. Rep. 669.

It is, however, the contention of counsel for the appellants, if we correctly understand their claim, that the later decisions of this Court have modified the rule we have stated to the effect that in construing the articles of incorporation the conditions and circumstances under which the language thereof was used by the incorpo-

rators should be looked into for the purpose of ascertaining the intention of the persons using it.

The cases relied upon in support of this claim are Senour
105 Manufacturing Company *v.* Church Paint Company *supra,* and Cuyler *v.* City Power Company, *supra.* In the last case there is no hint of any modification of the rule or that reference may be had to any matters outside the articles of incorporation to arrive at the intention of the incorporators when adopting the charter. On the contrary, it was held on the face of the articles, putting aside all technicalities, that it clearly appeared therefrom that the only business for which the corporation was organized was to produce and create motive power for transmission and use as might be desirable for any legitimate purpose. The only plausible support to be found in the first case for the claim of counsel is the statement in the opinion that: "The intention of the incorporators must control in construing its language. The same rule must be applied as is applied in the construction and interpretation of contracts and other writings." It is manifest, however, from the opinion, that it does not hold that the intention of the incorporators may be ascertained by a reference to any matters not appearing on the face of the articles, for it is expressly held that they are the *sole* criterion as to the purposes for which the corporation was formed, that is, for ascertaining the intention of the associates. Now, taking the articles in question by the four corners and reading them in the light of the rule we have stated, without resorting to technicalities, does it fairly appear therefrom that the corporation was organized for *the exclusive purpose* of engaging in manufacturing and business incidental thereto and reasonably necessary for carrying into effect such purpose? We answer the question in the negative. There are two general purposes for which the corporation was organized as declared by the articles. One, the purchase of the capital stock, evidence of indebtedness and assets of an existing corporation; and the other the manufacture and sale of all articles, implements, and machinery, made of wood and iron, or either of them, and the manufacture of the materials therein used. The first purpose does not appear to be a necessary incident to the second one. On the contrary, the corporation was authorized to buy and sell the stock, choses in action and assets of the Northwestern Manufacturing and Car Company, mentioned in the articles, without ever engaging in the business of manufacturing. The first purpose appears to be independent of the second one, for the power to buy necessarily includes the incidental power to use, collect, deal with, or sell the stock and assets of the then existing corporation. Nor does it fairly appear, expressly or
106 by necessary implication, from the language of these articles, that such stock and assets were to be purchased only as a necessary incident to the declared purpose of manufacturing all articles which are made of wood or iron, or either of them. We have proceeded thus far as if the question whether the defendant corporation was organized for the sole purpose of carrying on an exclusive manufacturing business was an open one, and have reached the conclusion on the merits that it was not. A majority of the Court,

however, are of the opinion that the question is not an open one, for the reason that the identical articles of incorporation here under consideration were construed in the case of State *v.* Thresher Co. (the defendant here), 40 Minn. 213, and it was decided by the Court that the defendant was not such a corporation. It is urged on behalf of appellants that such decision was not in response to any issues in the case, hence all that is said in the opinion as to whether the defendant was organized for the sole purpose of carrying on an exclusive manufacturing business was obiter. We are of the opinion that it was not. The case referred to was one to forfeit the franchise of the defendant as a corporation because it was carrying on a business not authorized by its charter, that is, buying and dealing in the stock, evidence of indebtedness and assets of the car company. It is true that the State alleged and the defendant admitted that it was a manufacturing corporation, but its articles of incorporation were a part of the pleadings. Hence the first question before the Court was what kind of a corporation the defendant was—a question necessary to be determined, for whether the defendant had misused its corporate franchises depended largely upon the answer to be given to the question. And the Court laid down the rule for the construction of the articles of incorporation, construed them in accordance therewith, and held that the defendant was not a manufacturing corporation, but belonged to the class authorized by G. S., 1894, c. 34, title 2.

It follows that the stockholders of the defendant are liable for its debts, and that the order appealed from must be affirmed. So ordered.

START, *C. J.*

Twentieth. The law of Minnesota, as shown by its printed statutes and the printed reports of its Supreme Court, is to be taken as proved as a fact in this case.

Twenty-first. No assignment to the plaintiff as receiver of the claims of any of the creditors of the corporation against its shareholders upon their liability under the constitution and Statutes of Minnesota has ever been made by any of the creditors.

197 "Twenty-second. All certificates of shares of the stock of the Minnesota Thresher Manufacturing Company contained the statement that they were "full paid and non-assessable."

Twenty-third. On January 5, 1888, the Minnesota Manufacturing Company executed and delivered to the Massachusetts Loan & Trust Company, as Trustee, a mortgage of all its real estate, property, assets and franchises, but not purporting to cover the stockholders' personal liabilities, to secure the payment of sixteen hundred bonds of one thousand ($1,000) dollars each. On December 14th, 1900, in an action brought by the Trustee under said mortgage, in the United States Circuit Court for the District of Minnesota, for the foreclosure and sale of the property covered by said mortgage and by certain supplementary mortgages executed by the Minnesota Thresher Manufacturing Company for further assurances, E. D. Buffington was by said court appointed receiver of all the property

covered by said mortgages; said Buffington qualified as receiver, took possession of the said assets and property of the corporation, and carried on the business under the direction of the said court, until the foreclosure sale. Such foreclosure sale of all the property covered by the said mortgage was made on May 25, 1901, under final decree of foreclosure and sale made by the said court, and a conveyance of all of said property was on June 13, 1901, executed and delivered to the purchaser at such sale. Such sale and conveyance was by a decree of said Court confirmed on July 12th, 1901; and on September 4, 1901, the Receiver was discharged and the receiver and his sureties released from obligation on his bond.

Twenty-fourth. This action was commenced on January 28th, 1901.

Twenty-fifth. No action was brought or judgment obtained by any of the creditors of the Minnesota Thresher Manufacturing Company against that company excepting as appears in the record.

108 EXHIBIT "A."

List of Present Preferred Stockholders of Record of Minnesota Thresher Manufacturing Company.

Name.	Residence.	No. shares.
Abington National Bank	Abington, Mass	321
Aetna National Bank	Hartford, Conn	268
Amoskeag Savings Bank	Manchester, N. H	114
Ashcroft Manufacturing Company.	Bridgeport, Conn	30
American Oak Leather Company.	Chicago, Ill	3
Alston Manufacturing Company	Chicago, Ill	28
Blackstone National Bank	Boston, Mass	106
Bristol County National Bank	Taunton, Mass	175
Bay State National Bank	Lawrence, Mass	99
Burnham, H. B.	Epping, N. H	11
Blumpey, Philip H.	Newburyport, Mass	64
Butters, Geo. H.	Fitchburg, Mass.	21
Belknap Savings Bank	Laconia, N. H	53
Bates, Emory L.	Fiskdale, Mass	211
Barron, Arianna A	Concord, N. H	44
Blodgett, John S.	Concord, N. H	64
Bartlett, Benj. L.	East Deering, N. H	23
Barron, John H.	Concord, N. H	21
Boylston National Bank	Boston, Mass.	183
Baker, Oliver K.	West Dennis, Mass.	21
Blue Hill National Bank	Milton, Mass.	207
Barton National Bank	Barton, Vt.	103
Baldwin, O. D.	N. Y. Tribune Building, N. Y. City.	7
Brigham, Chas. L.	Hudson, Mass.	107
Bagg, S. F.	Watertown, N. Y	237
Buffington, E. D	Stillwater, Minn	3
Bourne, Russell	Plymouth, Mass.	106
Brown, W. C.	Freeport, Ill	2
Berry Bros.	Detroit, Mich	2
Besly & Co., Chas. H.	Chicago, Ill	3
Ball & Naylor	Minneapolis, Minn	2
Burd & Little	St. Louis, Mo	2
Barr, G. D.	Buffalo, N. Y	151

Name.	Residence.	No. shares.
Bradley & Vrooman	Chicago, Ill	4
Buckley, Chas. F.	Southport, Conn	20
Barrett, W. T.	Chicago, Ill	88
Breslin, Thos	Waterford, N. Y.	52
Burlingame, C. S.	Danielson, Conn	18
Backus, Chas. P.	Danielson, Conn	18
Bishop, Allie E.	New Braintree, Mass	21
Brennan, James	P. O. Box 484, Minneapolis, Minn.	7
City National Bank	Worcester, Mass.	354
Cushing, L. B	Newburyport, Mass	85
Chamberlain, J. P.	Buffalo, N. Y.	21
Cowles, W. H. H	Randolph, Mass.	33
Carpenter, Chas. H.	North Chichester, N. H.	22
Cutler, Geo. H	Fitchburg, Mass.	37
Cape Cod National Bank	Harwich, Mass.	214
Crowell, Edw. F.	West Dennis, Mass.	43
109 Chapman, Jas. L.	Fitchburg, Mass.	42
Cochechew National Bank	Dover, N. H.	104
Churchill, Elizabeth M	5108 South Broadway, St. Louis, Mo.	50
Cutcheon, F. W. M.	St. Paul, Minn.	4
Curtiss, Andrew R.	Stepney Depot, Conn	20
Carter, Geo. E.	Exchange Building, Boston, Mass	38
Crippen, H. J., Dewey, D. R., and E. B. Buffington, Trustees		192
Carter, Fred G., Adm. Est. of Marion A. Carter.	Lebanon, N. H.	8
Cook, Sarah J.	50 Nassau Street, Fitchburg, Mass.	21
Crosby, Stephen M.	60 State Street, Boston, Mass.	10
Clifford, G. F.	Fitchburg, Mass.	63
Cutler, Mary E.	Fitchburg, Mass.	5
Downing, Amos W.	Haverhill, Mass.	82
Dean, Theo., Est. of, care of C. D. Stickney.	No. 1 Herald Building, Boston, Mass.	286
Dyer, Jos.	South Weymouth, Mass	34
Durgin & Son, J.	Boston, Mass	53
Dime Savings Bank	Norwich, Conn.	206
Damon, Fannie A.	Clinton, Mass	21
Dewey, D. R.	Chicago, Ill	4
Dime Savings Bank (Geo. E. Stiles, Receiver).	Willimantic, Conn	80
Degen, L. P.	San Francisco, Cal.	8
Doyon, Arvilla.	Madison, Wis.	111
Dewey & Buffington, Surviving Trustees.		85
Dix, Elizabeth F.	Lancaster, Mass.	7
Emery, Joseph M	Simcook, N. H.	21
Emerson, Talcott & Co.	Rockford, Ill.	38
Estate of Geo. Stetson	Bangor, Me	52
Endicott, Henry	Boston, Mass.	100
First National Bank	Provincetown, Mass	376
First National Bank	Montpelier, Vt.	307
First National Bank	Chelsea, Vt.	470
First National Bank	Ottawa, Ill.	274
First National Bank	South Weymouth, Mass	114
Farrar, Judson N.	Abington, Mass.	21
Folsom, A. G.	Laconia, N. H.	11
Foster, Wm.	Corning, N. H	21
First National Bank	Bangor, Me	199
Farley, Nathan	New Boston, N. H.	21
Farley, H. Nelson	Concord, N. H	21

Name.	Residence.	No. shares.
Farwell, Elijah C.	Fitchburg, Mass.	12
Forbes, M. A. S.	Clinton, Mass.	21
First National Bank of Killingly as Coll.	Danielson, Conn.	235
Foster, Jas. M.	63 Federal Street, Boston, Mass.	200
First National Bank	Clinton, Mass.	103
Fitchburg Mutual Fire Insurance Company	Fitchburg, Mass.	107
Fiske, J. N.	Boston, Mass.	100
First National Bank	Marlboro, Mass.	102
First National Bank	Suffield, Conn.	53
Farnsworth, Ezra, care of Parker, Wilder & Co.	Boston, Mass.	100
Fogg, J. S., Crippen, H. J., Dewey, D. B., Trustees.		149
First National Bank	Willimantic, Conn.	80
First National Bank	Oxford, N. Y.	43
Freeman & Sons Manufacturing Company, S.	Racine, Wis.	4
First National Bank	Bethlehem, Pa.	202
Frink, Geo. S.	Chicago, Ill.	86
(This stock now held by the Weston Furnace Company, to whom all notices should be sent.)	Manistique, Mich.	
110 French Spring Company, Ltd., The A.	Pittsburg, Pa.	85
Fogle, H. C.	Canton, O.	1
Frothingham, Elizabeth S.	Cambridge, Mass.	50
Farwell, Levi A.	Wiggin, Col.	32
Foote, Louise Stetson nee Louise F. Stetson, Bangor, Me.	Cairo, Egypt	17
Great Falls National Bank	Great Falls, N. H.	200
Giles, Thomas F., Adm. of Est. of Jesse H. Giles.	Abington, Mass.	85
Goodnow, Lyman H.	Fitchburg, Mass.	235
Goodhue, Elizabeth C.	Newburyport Mass., Andover, Mass., or Marion street, Brookline, Mass.	21
Goodrich, Edwin A.	Fitchburg, Mass.	21
Georgetown National Bank	Georgetown, Mass.	54
Gloucester National Bank	Gloucester, Mass.	97
Greenlee Bros. & Co.	227 West 12th Street, Chicago, Ill.	29
Gardner Gov. Co.	Quincy, Ill.	94
Graton, Henry C.	Worcester, Mass.	208
Grosvenor, Ellen G.	Brooklyn, N. Y.	60
Grant Corundum Wheel Company	Springfield, Mass.	2
Gibbs, Mary E.	Detroit, Mich.	107
Grover, Geo. W.	Sheffield, Mass.	21
Goodwin, Mrs. C. A., Box 275 or care of Tremont National Bank.	Lexington, Mass. / Boston, Mass.	20
Hamilton National Bank	Boston, Mass.	108
Hingham National Bank	Hingham, Mass.	103
Home National Bank.	Brockton, Mass.	207
Highland National Bank	Newburg, N. Y.	104
Haverhill National Bank	Haverhill, Mass.	104
Hanscom, Julia M Care of R. W. Nason.	Bridgewater, Mass. / Advertiser Building, Boston, Mass.	21
Hayward, Chas. H.	Fitchburg, Mass.	21
Hayward, Myria J.	Fitchburg, Mass.	21
Hill, Clarke & Co.	No. 36 Oliver Street, Boston, Mass.	16
Hyde, H. D.	Boston, Mass.	3

Name.	Residence.	No. shares.
Hospes, E. L. & Co.	Stillwater, Minn.	7
Hersey & Bean Lumber Company.	Stillwater, Minn.	8
Hueter, E. L.	San Francisco, Cal.	1
Hopkins, D. A.	113 Liberty Street, New York, N. Y.	53
Hoyt, Mary H.	Detroit, Mich.	21
Hamilton, Caroline A.	Sun Prairie, Wis.	21
Herrick, Jeneva S.	Madison, Wis.	111
Hancock National Bank, John.	Springfield, Mass.	103
Johnson, Wm. R.	Newburyport, Mass.	42
Johnson, Caroline E.	Newburyport, Mass.	42
Jersey Shore Banking Company.	Jersey Shore, Pa.	103
Johnson, Mary A. or Chester N.	East Templeton, Mass.	64
Janney, Semple & Co.	Minneapolis, Minn.	3
Jackson, Byron.	625 Sixth Street, San Francisco, Cal.	26
Jones, Asa T.	623 Cascade Avenue, Colorado Springs, Col.	42
Knight, Jos. A.	Worcester, Mass.	188
Kirk, R. A.	St. Paul, Minn.	3
Kirkwood, A. J.	Chicago, Ill.	65
Lawrence National Bank.	Lawrence, Mass.	98
Lord, Chas. S.	Otter River, Mass.	21
Lane, Abigail R.	Lancaster, Mass.	21
Leicester National Bank.	Leicester, Mass.	106
Loan and Trust Savings Bank.	Concord, N. H.	104
111 Lechmere National Bank.	East Cambridge, Mass.	409
Lindeke, Wm.	St. Paul, Minn.	4
Laconia National Bank.	Laconia, N. H.	50
Lawrence, Mary Porter.	Grand Rapids, Mich.	26
Lawrence, John S.	Grand Rapids, Mich.	25
Massachusetts National Bank.	Boston, Mass.	200
Mercantile National Bank.	Salem, Mass.	206
Merchants National Bank.	Newburyport, Mass.	107
Mechanics National Bank.	New Bedford, Mass.	107
Mechanics National Bank.	Worcester, Mass.	214
Mason, Wm. G.	Concord, N. H.	21
Manufacturers National Bank.	Boston, Mass.	105
Merrimack National Bank.	Haverhill, Mass.	103
Marblehead National Bank.	Marblehead, Mass.	206
Merchants National Bank.	Norwich, Conn.	53
Mankato Linseed Oil Company.	Mankato, Minn.	9
Moore Manufacturing Company.	Chicago, Ill.	9
Murphy & Co.	Chicago, Ill.	1
Mears, Lois C.	420 North Carroll Street, Madison, Wis.	42
Mandell, Mrs. Almira W. Care of Tremont National Bank.	North Cambridge, Mass. Boston, Mass.	65
Markley, Alling & Co.	Chicago, Ill.	1
Morgan, D. N.	Bridgeport, Conn.	20
Morse, Deborah D.	Stillwater, Minn.	5
Minnesota Commercial Company.	Stillwater, Minn.	1125
Murdock, J. B.	Mansfield, Ohio.	12
National Revere Bank.	Boston, Mass.	106
New Hampshire National Bank.	Portsmouth, N. H.	103
National Bank of Commerce.	Boston, Mass.	209
National Exchange Bank.	Salem, Mass.	103
National Bank of Barre.	Barre, Vt.	205
National State Capitol Bank.	Concord, N. H.	194
Nichols, Jno. B.	Haverhill, Mass.	544
Newark City National Bank.	Newark, N. J.	104
National Grand Bank.	Marblehead, Mass.	53

Name.	Residence.	No. shares.
Nichols, Julia A.	Shrewsbury, Mass.	42
Northboro National Bank	Northboro, Mass.	193
National Eagle Bank	Boston, Mass	187
Naumkeag National Bank	Salem, Mass.	310
National Tube Works Company	Boston, Mass	12
Nicols & Dean	St. Paul, Minn.	11
Nash, Edw. H.	Westport, Conn	200
Nash, Amelia R	Westport, Conn	25
Nichols, Leroy E.	49 Phipp Avenue, Dorchester, Mass.	268
Nash, Edw. A.	Westport, Conn	25
Nash, Dan'l C.	Norwalk, Conn	25
Old Colony National Bank	Plymouth, Mass.	512
Ordway, Asa P.	Newburyport, Mass	21
Osborn, Francis A.	Boston, Mass	10
O'Hara, John J. (Care of Morehead, Irwin & Co.)	Cincinnati, Ohio	171
Penigiwasset National Bank	Plymouth, N. H.	51
Prescott, Chas. H.	Fitchburg, Mass.	21
Peverly, Sarah A.	Concord, N. H.	43
Potter, Lovell & Co.	Boston, Mass	1053
Proctor, Wm.	Chicago, Ill.	193
Pynchon National Bank	Springfield, Mass	103
112 Phinney, E. A	Minneapolis, Minn	2
Partridge, Mary S.	Stockton, Me	21
Putnam, Albert D	Danielson, Conn.	18
Pittsburg Hinge Company	Allegheny, Pa.	3
Quincy, Sam'l H.	Lancaster, Mass	49
Quinsigamond National Bank.	Worcester, Mass.	51
Quincy, Josiah	No. 19 Milk Street, Rms. 44-45, Boston, Mass.	4
Quincy, Grace W.	Lancaster, Mass	4
Randolph National Bank	Randolph, Mass.	53
Rice, Thos. Fred A. Brigham and H. A. Maynard, Exc. Est.	Riverside, R. I. / Shrewsbury, Mass.	107
Rice, Wm. E.	Worcester, Mass.	258
Roane Iron Company	Chattanooga, Tenn.	22
Rice, Emery E.	Woonsocket, R. I	9
Rice, Geo. H.	West Topsham, Vt.	9
Rice, Lucius E.	Togus, Me.	3
Rothwell, Thos. E.	Dorchester, Mass.	800
Roberts, Harry J.	Lowell, Mass	516
Stetson, Geo. (Edw. Stetson, Trustee.)	180 Exchange Street, Bangor, Me.	101
Sibley, Harriet, care of E. Reed.	148 State Street, Boston, Mass.	107
Sanborn, Josiah B	Concord, N. H.	128
Sibley, Harrington	Fitchburg, Mass.	21
Spencer, C. B.	63 Federal Street, Boston, Mass.	62
Second National Bank	Bangor, Me	200
Souhegan National Bank	Milford, N. H.	103
Streator Glass Company	Streator, Ill.	26
Spaulding, D. J	Black River Falls, Wis.	59
Stafford National Bank (Chas. M. Josyln, Rec.)	Stafford Springs, Conn. / Hartford, Conn.	80
Spaulding, Walter M.	Worcester, Mass.	4
Sabin, D. M.	Duluth, Minn.	70
Stoddard, John T., Trustee.	Plymouth, Mass.	11
Scribner, Edw. E.	St. Paul, Minn.	1
Schulenburg & Boeckler Lumber Company.	Stillwater, Minn.	23
Sanborn, Jos. B., Adm. Est Sarah J. Moore.	London, N. H.	21

Name.	Residence.	No. shares.
Shadbolt & Boyd Iron Company	Milwaukee, Wis.	10
Saftenberg, A. F.	Chicago, Ill.	1
Stow, Laura D.	Chelsea, Vt	8
Stetson, Lily G.	Bangor, Me	18
Stetson, Henry C.	Bangor, Me.	17
Trustees under will of Washington Reed.	Rockland, Mass	114
Toppan, Sarah M.	Cambridge, Mass	21
Turner, R. W. & Co	Randolph, Mass.	42
Taylor & Co.	Oakland, Cal.	11
Trustees E. Dresser, J. C. Carter and G. E. Carter, for Nellie M. Clark.	Cambridgeport, Mass.	37
Trustees E. Dresser, J. C. Carter and G. E. Carter, for Fannie C. Porter.	Cambridgeport, Mass.	37
Trustees E. Dresser, J. C. Carter and G. E. Carter, for Chas. H. Carter.	Cambridgeport, Mass.	37
Tibbits, Edw. H.	Norwich, Conn.	612
Union National Bank	Weymouth, Mass.	630
Van Wagenen, Jno. R. Prest.	Oxford, N. Y.	80
Ware National Bank	Ware, Mass.	104
Winchester National Bank.	Winchester, N. H.	107
Weeks, Geo. W.	Clinton, Mass.	21
113 Wyman, Isaac C.	33 School Street, Boston, Mass.	62
Whitely, John, Trustee.	Shirley Village, Mass.	42
Wilson, Wm., Trustee	Endfield, N. H.	42
Whittier, Sam'l	Deerfield, N. H	43
Wentworth, Jos.	Concord, N. H.	107
Woods, Maria H., Adm.	Concord, N. H.	42
Whitney, Chas. H.	Fitchburg, Mass	21
Windham Co. Savings Bank	Danielsonville, Conn.	385
Weeks, Jos. D. (dead)	Canaan, N. H.	11
Watertown Steam Engine Company	Watertown, N. Y.	31
Winslow Car Roofing Company (succeeded by Chicago-Cleveland Car Roofing Company.	Cleveland, O.	15
Woodstock Iron Company	Anniston, Ala	87
Williams, Wm. S.	Glastonbury, Conn.	107
White, Mrs. E. W.	4029 Walnut Street, Philadelphia, Pa.	20
Whitney, Marcus, Guardian	Gardner, Mass.	21
Woodbury, Clara A., now Mrs. O. T. Woodbury.	Fitchburg, Mass	32
Wilkins, Mrs. Eliza A.	Westport, Conn.	25
White, E. B.	Concord, N. H.	485
Wilson, William H.	Waltham, Mass	200
Sewall, Walter A.	Concord, N. H	85
Waterman, Henry	17 Milk Street, Boston, Mass.	128
Total Number of Shares		27,967

Name.	Address.	No. shares.	Date transferred.	To whom transferred.	Address.	No. shares.
Northfield Nat. Bank	Northfield, Vt.	103	Sept. 4, 1889	Rollin B. Delano	St. Paul, Minn.	103
Mass. L. & T. Co. Trustee	Boston, Mass.	6,000	Dec. 24, 1889	Cancelled under plan of reorganization		483
Saratoga Co. Bank	Waterford, N. Y.	103	Dec. 18, 1889	John Lawrence	Waterford, N. Y.	103
Executors Est. of Geo. P. Carter	Cambridgeport, Mass. (Care Geo. E. Carter.)	149	Jan. 17, 1890	Edwin Dresser, James C. Carter, Geo. E. Carter, Trustees for Nellie M. Clark.	Cambridgeport, Mass.	37
				Edwin Dresser, James C. Carter, Geo. E. Carter, Trustees for Fannie C. Porter.	Cambridgeport, Mass.	37
				Edwin Dresser, James C. Carter, Geo. E. Carter, Trustees for Chas. H. Carter.	Cambridgeport, Mass.	37
				Geo. E. Carter	Exc. Bldg., Boston	38
Herrick, Janette L. (Chas. E. Buell, Exc.)	Madison, Wis.	222	March 26, 1890	Amelia H. Doyan	Madison, Wis.	111
				Jeneva S. Herrick	Madison, Wis.	111
Reynolds, F. H. C., Ag't.	Bangor, Me.	30	May 16, 1890	Cancelled under plan of reorganization		30
Morse, Luther (Wm. H. Morse, Adm.)	Stillwater, Minn.	5	July 12, 1890	Deborah D. Morse	Stillwater, Minn.	5
Mass. Nat. Bank	Boston, Mass.	200	Aug. 13, 1890	H. C. Gridley	Stillwater, Minn.	200
Mass. Nat. Bank	Boston, Mass.	100	Sept. 3, 1890	H. C. Gridley	Stillwater, Minn.	100
Fogg, Crippen & Dewey, Trustees		42	Oct 1, 1890	Asa T. Jones	623 N. Cascade Ave., Col. Springs, Col.	42
Delano, Rollin B.	St. Paul, Minn.	103	Dec. 17, 1890	H. C. Gridley	Stillwater, Minn.	103
Fay & Co., J. A.	Cincinnati, O.	171	Feb. 17, 1891	Jno. J. O'Hara (Care of Morehead, Irwin & Co.)	Cincinnati, O.	171
Lawrence John (Jno. S. Lawrence & C. A. Waldron, Ex'rs.)	Waterford, N. Y.	51	March 6, 1891	Mary Porter Lawrence	Grand Rapids, Mich.	26
				John S. Lawrence	Grand Rapids, Mich.	25
Bagg, S. F.	Watertown, N. Y.	237	April 22, 1891	H. C. Gridley	Stillwater, Minn.	237
Buffington, E. D.	Stillwater, Minn.	4	June 4, 1891	H. C. Fogle	Canton, O.	1
				Self	Stillwater, Minn.	3
Goodhue, W. S.	Chicago, Ill.	4	Oct. 5, 1891	W. T. Barrett	Chicago, Ill.	4
Whitney, Guardian Ivers	Gardner, Mass.	21	March 11, 1892	Marcus Whitney, Guardian	Gardner, Mass.	21
Frothingham, A. T. (Almira W. Frothingham, Adm'x)	Boston (?)	110	April 29, 1892	Almira W. Frothingham	Cambridge, Mass.	110
Prince, F. M.	Minneapolis, Minn.	4	May 23, 1892	The Minnesota Commercial Co.	Stillwater, Minn.	4
Atlas Nat. Bank	Boston, Mass.	376	May 23, 1892	" " " "	" "	376
Fogg, Jno. S.	Boston, Mass.	50	May 23, 1892	" " " "	" "	50
O'Gorman, J. C.	Stillwater, Minn.	40	May 23, 1892	" " " "	" "	40
Executors Estate of L. E. Torinus	Stillwater, Minn.	6	May 23, 1892	" " " "	" "	6
Swan, Jessie L.	Stillwater, Minn.	80	May 23, 1892	" " " "	" "	80
Bailey, Isaac H.	New York City	31	May 23, 1892	" " " "	" "	31

Statement Showing Transfers of Preferred Stock—Continued.

Name.	Address.	No. shares.	Date transferred.	To whom transferred.	Address.	No. shares.
Fogg, Crippen, Dewey, Trustees		427	May 23, 1892	Lyman H. Goodnow, H. J. Crippen, D. B. Dewey, E. D. Buffington, Trustees	Fitchburg, Mass.	235
						192
Langdon, Cavour	Minneapolis, Minn.	4	May 24, 1892	The Minnesota Commercial Co.	Stillwater, Minn.	4
Hersey, R. F	Stillwater, Minn.	4	May 24, 1892	" " " "	" "	4
Snider, S. P.	Minneapolis, Minn.	4	May 24, 1892	" " " "	" "	4
Oppenheim, Ansel	St. Paul, Minn.	4	June 6, 1893	" " " "	" "	4
Lockey, Joseph	St. Paul, Minn.	4	May 24, 1892	" " " "	" "	4
Truesdell, Harry	Minneapolis, Minn.	4	May 24, 1892	" " " "	" "	4
Flandreau, C. E.	St. Paul, Minn.	4	May 24, 1892	" " " "	" "	4
				Emery E. Rice	Woonsocket, R. I.	4
Rice, Laura O., Geo. L. Stowe, Fred G. Carter, Exec'rs.	Lebanon, N. H.	42	May 26, 1892	Geo. H. Rice, Fred G. Carter, Adm. (?), Lucius E. Rice, Laura D. Stowe	Topsham, Vt., Lebanon, N. H., Togus, Maine	9 9 8 8
Grinley, H. C.	Stillwater, Minn.	640	May 27, 1892	Minnesota Commercial Co.	Chelsea, Vt., Stillwater, Minn.	8 640
First Nat. Bank	Norwich, Ct.	612	June 1, 1892	Edward H. Tibbits	Norwich, Ct.	612
Veazie Nat. Bank	Bangor, Me.	7	Nov. 1, 1892	Minnesota Commercial Co.	Stillwater, Minn.	7
Crippen, Buffington, Dewey, Trustees.		109	Nov. 1, 1892	" " "	Stillwater, Minn.	100
Bowan, Amelia H.	Madison, Wis.	111	June 21, 1893	Arvilla Doyan	Madison, Wis.	111
Frothingham, Almira W. (Wm. J. Mandell, Adm.)	Cambridge, Mass.	110	Oct. 3, 1893	Elizabeth S. Frothingham, Mrs. Almira W. Mandell	Cambridge, Mass.	55 55
115 Lawrence, John	Waterford, N. Y.	52	Oct. 30, 1893	Thos. Breslin	No. Cambridge, Mass. Waterford, N. Y.	52
Jno. S. Lawrence and Cornelius A. Waldron, Ex'rs.						
Cambridgeport Nat. Bank	Cambridgeport, Mass.	268	May 28, 1894	Leroy E. Nichols	49 Phipp Ave., Dorchester, Mass.	268
Crippen, Buffington, Dewey, Trustees.		105	July 28, 1894	Chas. H. Hayward, Maria J. Hayward, W. T. Barrett, W. T. Barrett	Fitchburg, Mass, Fitchburg, Mass, Chicago, Ill., Chicago, Ill.	21 21 21 21
Crippen, Buffington, Dewey, Trustees		405	July 28, 1894	Sarah J. Cook, G. H. & F. Cutler, Edw'd C. Crowell, G. H. Cutler, Oliver K. Baker, Cape Cod Nat. Bank, D. B. Dewey and E. D. Buffington (Surviving Trustees).	Fitchburg, Mass, Fitchburg, Mass, West Dennis, Mass., Fitchburg, Mass, West Dennis, Mass., Harwich, Mass.	21 21 21 21 21 214 85
Proctor, Wm.	Chicago, Ill.	29	Aug. 31, 1894	Greenlee Bros. & Co.	Chicago, Ill.	29
Pierce, Walter W.	Polo, Ill.	42	Nov. 1, 1894	W. T. Barrett	227 W. 12th St., Chicago, Ill.	42

Farwell, Dexter	Fitchburg, Mass	64	Nov.	2, 1894	Levi A. Farwell	Wiggins, Col	32
					Clara A. Woodbury	Fitchburg, Mass	32
The Minnesota Commercial Co	Stillwater, Minn	640	Dec.	27, 1894	S. F. Bagg	Watertown, N. Y	237
					Minn. Com'l Co	Stillwater, Minn	403
H. J. Crippen	Concord, N. H	485	June	3, 1895	C. F. Batchelder	Concord, N. H	485
By Anson T. Marshall, Administrator Estate H. J. C.					Samuel H. Quincy	Lancaster, Mass	7
Martha G. Sleeper, Mrs. Sam'l H. Quincy, and Elizabeth F. Dix, Exrs	Lancaster, Mass	21	Feb.	19, 1896	Josiah Quincy	19 Milk St., Boston, Mass	7
Union Foundry & Mach. Wks	Mansfield, O	12	Jan	25, 1897	Elizabeth F. Dix	Lancaster, Mass	7
Boston Nat. Bank	Boston, Mass	516	May	14, 1897	J. B. Murdock	Mansfield, O	12
					Harry J. Roberts	Lowell, Mass	516
Osborn, Francis A	Boston, Mass	20	May	14, 1897	Stephen M. Crosby	Boston, Mass	10
					Francis A. Osborn	Boston, Mass	10
Stetson & Co	Bangor, Me	104	July	28, 1897	Lily G. Stetson	Bangor, Me	18
Edward Stetson and Josiah K. Stetson, executors of estate of Geo. Stetson. Sarah Jewett Stetson, trustee and sole executrix of estate of J. Stetson.					Estate of Geo. Stetson	Bangor, Me	52
					Henry C. Stetson	Bangor, Me	17
					Louise F. Stetson	Bangor, Me	17
Wachusetts Nat. Bank	Fitchburg, Mass	63	June	16, 1898	G. E. Clifford	Fitchburg, Mass	63
					Albert D. Putnam	Danielson, Ct	18
First Nat. Bank of Killingly	Danielson, Conn	54	June	25, 1898	C. S. Burlingame	Danielson, Ct	18
					Chas. P. Barkus	Danielson, Ct	18
					Daniel C. Nash	Norwalk, Ct	25
					Edw'd A. Nash	Westport, Ct	25
Nash, Andrew C	Westport, Conn	100	Nov.	17, 1898	Mrs. Elija A. Wilkins	Westport, Ct	25
Daniel C. Nash, Edward A. Nash, executors.					Amelia R. Nash	Westport, Ct	25
Cutler, G. H. & T	Fitchburg, Mass	21	Dec.	2, 1898	Mary E. Cutler	Fitchburg, Mass	5
Clark A. Batchelder, administrator of estate of Tarrant Cutler, one of the partners.					Geo. H. Cutler	Fitchburg, Mass	16
Wm. A. Rust	Boston, Mass	100	Dec.	16, 1898	Tremont Nat. Bank	Boston, Mass	90
					Henry Endicott	Boston, Mass	10
Tufts, Geo. K	New Braintree, Mass	21	Feb.	14, 1899	Allie E. Bishop	New Braintree, Mass	21
Sikes & Co., S. R	Minneapolis, Minn	7	March	7, 1899	James Brennan	P. O. Box 484, Minneapolis, Minn.	7
					Grace W. Quincy	Lancaster, Mass	1
Sam'l H. Quincy	Lancaster, Mass	2	March	20, 1899	Samuel H. Quincy	Lancaster, Mass	1
					Grace W. Quincy	Lancaster, Mass	3
Quincy, Josiah H	Boston, 19 Milk St	7	March	20, 1899	Josiah H. Quincy	Boston, Mass	4
					Henry Endicott	Boston, Mass	100
Tremont Nat. Bank	Boston, Mass	800	May	6, 1899	Tremont Nat'l B'k	Boston, Mass	700
Batchelder, C. F	Concord, N. H	485	Nov.	23, 1900	E. B. White	Concord, N. H	485
Tremont Nat. Bank	Boston, Mass	700	Nov.	28, 1900	Thos. E. Rothwell	Dorchester, Mass	700
Endicott, Henry	Boston, Mass	10	Nov.	28, 1900	Thos. E. Rothwell	Dorchester, Mass	10
Merchants Nat. Bank	Salem, Mass	200	Dec.	12, 1900	Wm. H. Wilson	Waltham, Mass	200
Abbott, Emily J (John Kimball, Ex.)	Concord, N. H	85	Dec.	18, 1900	Walter A. Sawell	Concord, N. H	85
Bell, A. D. S	Boston, Mass	29	Jan.	8, 1901	Henry Waterman	17 Milk St., Boston, Mass	29
Monument Nat. Bank	Charlestown, Mass	99	Jan.	8, 1901	Henry Waterman	17 Milk St., Boston, Mass	99

116 *List of Present Common Stockholders of Record of Minnesota Thresher Manufacturing Company.*

Name.	Residence.	No. shares.
Allen, Gilman L	Shrewsbury, Mass	12
Ayer, James B	58 Mt. Vernon Street, Boston, Mass.	28
Ashley, Rev. Sam'l S	Northboro, Mass	20
Adams, Mary M	Northboro, Mass	10
Adams, Harriet P	1100 "M" Street, Washington, D. C.	4
Arnold, Ansel	Willimantic, Conn	20
Andrews, P. St. M	Norwich, Conn	60
Armstrong, Sarah P	48 Prospect Street, Norwich, Conn.	20
Abbott, Harlan P	393 Broad Street, Providence, R. I.	10
Ashworth, Jno. W	Ticonderoga, N. Y	8
Atwood, Julia A. M	Wauregan, Conn	34
Atwood, J. Walter	Wauregan, Conn	33
Atwood, J. Arthur	Wauregan, Conn	33
Bigelow, Cornelia W	Clinton, Mass	10
Bigelow, Henry N	Clinton, Mass	20
Bates, Emery L	Fiskdale, Mass	370
Bemis, Frederick G (Jno. W. Bemis, Adm'r.)	60 Devonshire Street, Boston, Mass.	25
Bean, Martha S	Framingham, Mass	10
Bartlett, Martha A	Mansfield, Mass	10
Birkenhead, Jno	Mansfield, Mass	50
Baker, Mrs. Julia V	Antrim, N. H	6
Brown, M. M. E	Edward Street, Worcester, Mass	30
Ball, Walter J	Townsend, Mass	14
Breed, Prudence A	Norwich, Conn	12
Baker, Jno. A	Concord, N. H	25
Blodgett, Susan A	Concord, N. H	20
Bemis, Dolly Ann	50 Cherry Street, Spencer, Mass	31
Brigham, Nath'l S	Worcester, Mass	10
Brigham, Mary P	Northboro, Mass	18
Bartlett, Wm. L	Northboro, Mass	14
Bradley, Anna E (Care of A. W. Seaver.)	Northboro, Mass	8
Brigham, Chas. L	Hudson, Mass	100
Burnap, James P	Marlow, N. H	40
Bouve, Walter L	119 Devonshire Street, Boston, Mass.	20
Bates, Arthur L	Fiskdale, Mass	60
Brainard, Harriette E	156 Washington Street, Hartford, Conn.	50
Brown, Mary E	West Lebanon, N. H	10
Bradley, Joseph S	129 Summer Street, Boston, Mass	50
Blodgett, Emma Susie (Care of J. F. D. Garfield.)	Fitchburg, Mass	40
Brooks, John	Princeton, Mass	10
Bigelow, Maria E	Dedham, Mass	2
Bartlett, Ursula J	New Worcester, Mass	17
Banks, Frederick J	Bridgeport, Conn	22
Booth, Louis N	Bridgeport, Conn	25
Bankhead, David	Pelham, N. Y	50
Booth, David B	Stratford, Conn	20
Bunnell, Rufus W	Bridgeport, Conn	10
Bright, Wm. M	Bangor, Me	20

	Name.	Residence.	No. shares.
117	Baker, Walter S.	Concord, N. H.	5
	Bailey, Sarah M.—(Lucy Geer, Exc.)	Norwich, Conn.	40
	Beers, Emily	Southport, Conn.	10
	Bright, George A.	Bangor, Me	20
	Bright, Mary G	Bangor, Me	11
	Booth, Emily	Stratford, Conn	5
	Brown, H. Martin. (Care of Brown Bros. & Co.)	Providence, R. I.	25
	Bloom, Frank A.	So. Manchester, Conn.	40
	Banister, Mrs. Mary E.	Fitchburg, Mass	20
	Briggs, Edwin O.	West Scituate, Mass	20
	Batchelder, John C	Danvers, Conn.	20
	Bernheimer, Adolph	51 and 53 White Street, New York City.	100
	Bernheimer, Isaac	320–2 Broadway, New York City.	200
	Bernheimer, Simon	320–2 Broadway, New York City.	200
	Bouton, M. D., Geo. B.	Westport, Conn.	100
	Burr, Ebenezer (Trustee Est. of David Banks.)	Bridgeport, Conn.	20
	Bowers, Mrs. Ellen A	Clinton, Mass	20
	Butters, Susan B.	409 Westford Street, Lowell, Mass.	10
	Bright, A. E. & J. M. (Excts. Est. of Jno. Bright.)	Bangor, Me.	20
	Breck, Mrs. Mary A	E. Somerville, Mass.	20
	Brett, Victor, Adm'r.,	Bangor, Me	25
	Bulkley, Benj. A	Southport, Conn.	20
	Bacon, Jennie M.	Fiskdale, Mass.	10
	Bourne, Lemuel.	Amboy, Ill.	6
	Bidwell, Corrinne B.	Collingsville, Conn	100
	Cowan, P. D.	Canastota, N. Y.	23
	Cowan, Mrs. Margaret R.	Canastota, N. Y.	2
	Cutler, Geo. H	Fitchburg, Mass.	120
	Cabot, John W. (Care of F. E. Cabot.)	19 Congress Street, Boston, Mass.	12
	Cochrane, Clark B	Antrim, N. H	10
	Caldwell, B. F.	Concord, N. H.	100
	Cogswell, P. B. (Sam'l C. Eastman, Exc.)	Concord, N. H.	10
	Crippen, S. J (Care of H. J. Crippen.)	Concord, N. H.	20
	Curtis, Calvin.	Stratford, Conn	10
	Curtis, Celia.	Stratford, Conn	14
	Cully, Eli.	Fitchburg, Mass.	20
	Conant, Edwin.	Worcester, Mass.	70
	Cogswell, C. P.	Norwich, Conn.	100
	Childs, Chas. H	Providence, R. I.	5
	Cox, Francis (Care of Edward C. Browne, Exc.)	40 Summit Street, Salem, Mass.	50
	Clark, Thos. H. (Mrs. Ellen E. Clark, Exc.)	Valley Falls, R. I.	20
	Currier, Anna R.	Holyoke, Mass.	10
	Curtis, Andrew B.	Stephney Depot, Conn.	20
	Craw, Mrs. F. R.	469 Kenard St., Cleveland, O.	2
	Couch, A. M.	New Fairfield, Conn	80
	Cheever, Henry T. (Eliza Cheever Wheeler, Exc.)	No. 8 State Street, Worcester, Mass.	8
	Church, Lucy T	Hampton, Conn.	20
	Carter, Geo. E.	Exchange Bldg., Boston, Mass.	50

Name.	Residence.	No. shares.
118 Campbell, Mrs. Jennie Cushing, L. B.	Albany, N. Y	20
Cushing, Margaret W.	Newburyport, Mass.	50
Cushing, Fannie E.	Newburyport, Mass.	10
Curtis, Roderick P.	Newburyport, Mass	10
Curtis, Lewis B	Bridgeport, Conn.	25
Childs, Nettie S. (Care of Ruthven Childs.)	Bridgeport, Conn.	25
Curtis, Esther L.	Hillsborough, N. H	20
Chandler, Letitia G	157 E. Main Street, Bridgeport, Conn.	15
Castle, James N.	Detroit, Mich	60
Cutler, Mary E.	Stillwater, Minn.	150
Dole, Mrs. Sarah A.	Fitchburg, Mass.	50
Daniels, Geo. T.	20 Bigelow Street, Cambridgeport, Mass.	10
Daniels, Mary F.	Fitchburg, Mass.	20
Dutton, Mary H.	Fitchburg, Mass.	20
Davis, Mary E.	Lebanon, Conn.	10
Dibble, Emeline.	Northboro, Mass.	22
Dresser, E., Carter, J.C. and Carter, G.E. (Trustees for Nellie M. Clark.)	Bridgeport, Conn	28
Dresser, E., Carter, J.C. and Carter, G.E. (Trustees for Fannie C. Porter.)	Cambridgeport, Mass.	50
Dresser, E., Carter, J.C. and Carter, G.E. (Trustees for Chas. H. Carter.)	Cambridgeport, Mass.	50
Dewey, D. B., Buffington, E. D. and Morgan, D. N., Trustees.	Cambridgeport, Mass.	50
Day, Ellen L.		9811
Dewing, Eva V	Worcester, Mass.	10
Ely, Dudley P.	Golden Gate, Cal. (Alameda Co.).	20
Ely, Dudline P.	South Norwalk, Conn	40
Eddy, Frederick A.	South Norwalk, Conn.	5
Estate of Horace G. Pond. (Lurah G. Pond, Adm.)	Bangor, Me	100
Ellis, Lucy J.	Hubbardston, Mass.	20
Eddy, Wm. J.	Newton Center, Mass.	10
Estate of E. M. Stockwell. (Harriet E. Stockwell, Adm.)	No. 3 Agawain Street, Worcester, Mass.	6
Estate of Mrs. C. W. Rose (F. M. Rose, Exc.)	13 Harvard Street (?) Worcester, Mass.	60
Foster, Wm. A.	Faribault, Minn.	2
Fogg, Jno. S.	Corning, N. Y.	40
Farley, Nathan	Boston, Mass	200
Fisk, Anna E. D. (Henry R. Davis, Adm.)	New Boston, N. H	10
Fairbanks, Mary J. N. (W. A. Fairbanks, Exc.)	Northboro, Mass.	10
Ferrin, Alvah, C. (Mrs. A. C. Ferrin, Exc.)	Westboro, Mass.	10
Fowler, Amos T.	Fitchburg, Mass.	100
Fowler, Mrs. A. E.	37 School Street, Concord, N. H.	12
Frost, Abbie T.	Willimantic, Conn.	20
Frost, Roger P.	Willimantic, Conn.	10
Fairbanks, Anna D.	Fitchburg, Mass.	10
Fiske, Sarah D	Fitchburg, Mass.	20
Farley, H. Nelson	Box 172, Northboro, Mass.	12
Farnum, Mrs. S. E. (née L. E. Farnum.)	Hingham, Mass.	2
Fuller, Luther	Concord, N. H.	10
	2033 Sanson, Street, Philadelphia, Pa.	2
	1613 Florida Avenue, Washington, D. C.	40

	Name.	Residence.	No. shares.
119	Frost, Augusta E	So. Norwalk, Conn.	4
	Fox, Virginia, L. W.	"The Richmond," Washington, D. C.	28
	Fitchburg Home for Old Ladies	Fitchburg, Mass.	45
	Goodnow, Lyman H., Trustee	Fitchburg, Mass	30
	Goss, Jonas	Clinton, Mass.	10
	Gay, Wm. R.	Lebanon, Conn.	100
	Gould, Edward (Albert F. Gould, Adm.)	Worcester, Mass.	85
	Gale, Cyrus	Northboro, Mass.	20
	Garfield, Mary L. (Care of J. F. D. Garfield.)	Fitchburg, Mass	40
	Gray, Howard	Dorchester, Mass.	6
	Glover, Betsey A.	Newton, Mass	10
	Glover, M. Effie	Newton, Mass	10
	Glover, M. Elizabeth	Newton, Mass	10
	Goodsell, Alfred T	Westport, Conn	12
	Gleason, Wilbur A.	Bridgeport, Conn	4
	Griffin, John.	Newtown, Ct., P. O. Cold Spring.	50
	Glover, Susan N.	Hartford, Conn., or Bridgeport, Conn.	20
	Gould, James L.	295 Fairfield Avenue, Bridgeport, Conn.	20
	Griffin, Geo	Newtown, Ct., P. O. Cold Spring	20
	Geer, Lucy	Norwich, Conn	90
	Geer, Abby	Norwich, Conn	20
	Geer, Ellen	Norwich, Conn	90
	Geer, Robert	Albany, N. Y.	70
	Geer, Fred L.	Albany, N. Y.	6
	Glover, Mary B	Newtown, Conn.	20
	Griffing, Bruce N	Shelton, Conn	120
	Grassie, Mary M.	53 Prospect Street, Worcester, Mass.	20
	Geer, Arthur H	Albany, N. Y	4
	Gibbs, Mrs. Mary E.	60 Erskine Street, Detroit, Mich.	100
	Griffing, C. E (Adm. of Andrew Northup.)	Danbury, Conn	30
	Griffing, C. E (Adm. of Kate M. Northup.)	Danbury, Conn.	10
	Hunnewell, James F.	13 Green Street, Charlestown, Mass.	80
	Hunnewell, James F., Trustee	13 Green Street, Charlestown, Mass.	10
	Haskell, Maria A	Clinton, Mass.	40
	Haskell, Harriet M	Clinton, Mass.	20
	Hall, L. A.	So. Coventry, Conn	75
	Hartshorn, Louisa S	Berlin, Mass.	10
	Hayden, Chas. S., Trustee	Fitchburg, Mass	12
	Hastings, Louisa S., Guardian	Berlin, Mass.	10
	Hartshorn, Lucy E.	Monroe Street, Somerville, Mass.	10
	Harris, Chas. M.	Oakdale, Mass.	25
	Harris, Henry F.	405 Main Street, Worcester, Mass.	25
	Harris, Clara A	Oakdale, Mass.	10
	Harris, Emily S.	Oakdale, Mass.	10
	Holcomb, Julia A.	Bridgeport, Conn	5
	Hill, Seth	Stepheny Depot, Conn	10
	Hillman, Mrs. Martha R.	Barre, Mass.	20
	Hamlin, Ellen V.	Bangor, Me.	12
	Hamlin, Chas.	Bangor, Me	12
	Hamlin, Hannibal E.	Elsworth, Me.	12
	Hamlin, Frank	107 Dearborn Street, Chicago, Ill.	12
	Haskell, Eunice H.	Clinton, Mass.	10
	Hale, Mary C	Ellsworth, Me.	60

Name.	Residence.	No. shares.
120 Holbrook, L (Exc. estate of Susan H. Gale.)	Box 536, New York City	27
Jenks, Harriet S (Care of Edward A. Jenks.)	Concord, N. H.	40
Johnson, Chester N. or Mary A	E. Templeton, Mass	60
Jennison, Eunice	Fitchburg, Mass	24
Jennings, Eliza M.	Westport, Conn	20
Jessup, Julia F.	Southport, Conn	25
Judson, Jerome	Sandy Hook, Conn.	20
Jennings, Walter	Southport, Conn	15
Jennings, Deborah	Southport, Conn	1
Jerome, Frank S	Norwich, Conn	100
Kirkwood, T. S	43 Monroe Street, Chicago, Ill.	200
Keeler, S. B	Bridgeport, Conn	10
King, Mary A. E	No. Leominster, Mass	20
Kohn, Julius	44 Broad Street, New York City	100
Lord, Chas. S	Otter River, Mass	20
Lathrop, Amanda S (Care of H. M. Bigelow.)	Clinton, Mass.	2
Lowell, Caleb C.	Bangor, Me.	10
Lawrence, O. H.	Fitchburg, Mass	35
Lincoln, Nathan	18 Fayette Street, Cambridgeport, Mass.	40
Lincoln, Nathan F.	18 Fayette Street, Cambridgeport, Mass.	20
Lincoln, William S. (Levi Lincoln, Winslow S. Lincoln, Exes.)	Worcester, Mass.	19
Lanphear, H. Dwight	North Windham, Conn	10
Littlehale, J. D. Exc.	Fitchburg, Mass	6
Lake, Jno. M	Monroe, Conn	10
Lacy, Mary A.	Platteville, Conn.	20
Lockey, Jno. M. (As guardian of Mary E. Burgess.)	Leominster, Mass	10
Lake, Katherine L.	137 College Avenue, New Haven, Conn.	30
Littlefield, Ida B.	41 Wolcott Street, Pawtucket, R. I.	20
Mason, Abby J (Mary H. Dutton, Exc.)	Lebanon, Conn	10
Moseley, Franklin	Concord, N. H.	100
Maderia, Clara S	1541 Arch Street, Philadelphia, Pa.	10
McNeil, W. H	Lancaster, Mass.	100
Morgan, Medora H.	Bridgeport, Conn	10
Mallet, Sylvanus S.	Easton, Conn	10
Morgan, D. S	Bridgeport, Conn	240
Munroe, Hamlet (Dec.)	Northboro, Mass	4
Merritt, Monroe D.	East Templeton, Mass.	30
Mason, Frank	Groton, Mass.	12
Minnesota Commercial Co.	Stillwater, Minn.	18,212
Millard, W. H.	Delhi, N. Y	20
Murphy, Eliza J	265 East Main Street, Bridgeport, Conn.	10
Millard, Geo. H.	Delhi, N. Y.	40
Newton, Theresa A (Care of J. D. F. Garfield.)	Fitchburg, Mass	60
Natick Five Cents Savings Bank	Natick, Mass.	200
Nash, Edw. H.	Westport, Conn.	400
Nash, Edw. A	Westport, Conn.	90
Nash, Daniel C	Norwalk, Conn	60
Nourse, Henry H.	Marlboro, Mass.	20

Name.	Residence.	No. shares.
Nourse, Chas. W.	33 Huntington Avenue, Marlboro, Mass.	20
Nichols, Mary J.	Stepney, Conn.	10
Nash, Amelia R.	Westport, Conn.	65
121 Nealley, Jas. A.	Providence, R. I.	20
Osgood, Elizabeth W. (Herbert C. Newell, Exc.)	550 Pearl Street, New York City.	25
Orcutt, Jerome.	Bridgeport, Conn.	10
Phillips, Mrs. Sarah J (Now Mrs. Sarah J. Cook.)	50 Nassau Street, Fitchburg, Mass.	10
Pike, Chas. C. (Address Mrs. C. C. Pike.)	Peabody, Mass.	30
Prouty, David	Spencer, Mass.	259
Potter, James B (Clara Potter, Adm.)	97 Ocean Street, Dorchester, Mass.	80
Pratt, Jno. M.	South Ashburnham, Mass	50
Pennell, Leida M	Brunswick, Me	15
Proctor, Josiah	Northboro, Mass.	10
Peck, John H.	Enfield, Mass	30
Pitts, Etta L.	Leominster, Mass	25
Pitts, Abbie E.	Leominster, Mass.	25
Palmer, John	Albany, N. Y.	100
Pierce, Etta F.	North Leominster, Mass., Box 305.	20
Peffers, Wm. C.	New Fairfield, Conn	10
Perkins, Jacob H. (Care of D. S. Spaulding.)	Mansfield, Mass.	10
Prentiss, Mrs. Adeline A	Windham, Vt.	16
Putnam, Chas. W. B., Adm'r.	Fitchburg, Mass.	160
Proctor, Geo. N.	Fitchburg, Mass.	100
Paret, Carrie G. Clarke.	La Conea Verde, near Stroudsburg, Pa. (Monroe Co. Box 516.)	40
Rice, Thos. (Fred. A. Brigham, H. A. Maynark, Exes.)	Riverside, R. I. / Shrewsbury, Mass.	100
Rice, Emma L.	Worcester, Mass	100
Rice, James D.	Worcester, Mass	100
Rice, Lucy W.	Worcester, Mass	100
Rice, William E.	Worcester, Mass	100
Roote, Abbie K (Care of C. B. Roote.)	Northampton, N. H.	20
Read, Delina.	Fall River, Mass.	30
Risley, O. H. K. (Geo. E. Stiles, Adm.)	Willimantic, Conn.	100
Redman, Anna G. P.	1081 Chapel Street, New Haven, Conn.	10
Rogers, Samuel T.	166 John Street, Bridgeport, Conn.	32
Rice, Carlo	Barre, Mass.	10
Rice, Emery.	Barre, Mass.	10
Rice, Edmund, Jr.	Olympia, Wash.	400
Rhode Island Society of Cincinnati. (Wm. Delion King, Treas.)	Sandwich, Mass.	8
Stickney, A. B.	St. Paul, Minn.	545
Slater, Jas. F. (Dec'd).	Bangor, Me.	10
Sweetser, Nancy C. (Care of A. H. Sweetser.)	25 Kilby Street, Boston, Mass.	16
Swan, Chas. L.	Clinton, Mass	120
Spaulding, Harriet N.	Townsend, Mass.	6
Slater, Lydia R	Webster, Mass.	12
Straton, C. C., Trustee.	Fitchburg, Mass.	50

	Name.	Residence.	No. shares.
	Stanton, R. P (Harriet S. Blackmar, Adm.)	Norwich, Conn	20
	Seaver, A. W	Northboro, Mass	32
	Seaver, A. W (Att'y for Adaline K. Nelson.)	Northboro, Mass	40
122	Safford, Adeline D. (Henry R. Davis, Adm.)	Evenlt, Mass	12
	Seaver, A. W (Trustee "Houghton Est.")	Northboro, Mass	3
	Sibley, Harrington	Fitchburg, Mass	90
	Sheldon, Thos. C	Fitchburg, Mass	10
	Spaulding, Francis W	Mansfield, Mass	10
	Sheldon, W. G. (Address Mrs. A. M. Parker [Sheldon dead].)	Eagleville, Conn Houston, Tex	6
	Swift, Martha G (Kate L. Dimock, Exc.)	Mansfield Depot, Conn	10
	Skerry, Jennie E	Warren, Mass	70
	Staples, Alonzo	Greenfield Hill, Conn	10
	Sawtelle, Mrs. S. J. (Care of H. E. Woods.)	Fitchburg, Mass	15
	Stuart, Geo. W	Newtown, Conn	20
	Sherwood, Daniel	Hartford, Conn	8
	Sears, Marshall H	Newtown, Conn., P. O. Cold Spring.	10
	Stevens, Wm. P	Willimantic, Conn	20
	Sanford, Chas. G	Bridgeport, Conn	50
	Small, Sumner	Northboro, Mass	10
	Scandrett, Mrs. I. M. W	Faribault, Minn	2
	Sherman, Andrew B	Fitchburg, Mass	100
	Smith, Chas. E	West Brookfield, Mass	40
	Scruton, Chas. A	Arkansas City, Kansas	20
	Sherwood, E. C (Exc. Est. of Mrs. Abby Martinson.)	Southport, Conn	14
	Simmons, Armenia H	Bridgeport, Conn	80
	Somers, Phoebe	Leominster, Mass	20
	Schenck, Mrs. E. H. (Care of Geo. Montague.)	Pres. Second National Bank, New York City.	10
	Thompson, E. R. (O. A. Beckwith, Adm.)	Collinsville, Conn	100
	Tolman, Cyrus S	Fitchburg, Mass	40
	Tyler, L. C., Trustee	Bangor, Me	8
	Taylor, Cornelius B	Newtown, Conn	70
	Towcey, Mary A (Alfred B. Beers, Att'y estate of Mary A. Towcey.)	Long Hill, Conn Rooms 4, 5, 6, Sturdevant Bldg., Bridgeport, Conn.	10
	Turney, Sherman F	13 Desbrosses Street, New York City.	10
	Turney, Geo. A	Birmingham, Conn	10
	Towsey, Mary B. (Union Trust Co., Exc.)	New York, N. Y South Broadway, New York City.	20
	Tracy, Henry R	16 Worcester Square, Boston, Mass.	100
	Tracy, Isabella M	Chautauqua, N. Y	20
	Valentine, Catherine B	Northboro, Mass	22
	Very, Mrs. Julia S	Hartford, Conn	9
	Whiteley, Jno., (S. S. Niles, Trustee for C. B. Walker.	Shirley Village, Mass	20 20
	Whitney, Chas. H	Fitchburg, Mass	20
	Williams, Lovell. (Eliza Williams Lawrence, Executrix.)	Fitchburg, Mass	100
	White, A. A	Morehead, Minn	60

Name.	Residence.	No. shares.
Worcester National Bank	Worcester, Mass.	179
White, Chas. J.	5 Prescott Hall, Cambridge, Mass.	24
White, Naaman L.	Weymouth, Mass.	20
Whitaker, Nat. C.	Northboro, Mass.	16
123 Walker, George M.	Cor. Bennett and Main Sts., Worcester, Mass.	100
Whittemore, Eli J.	776 Main Street, Worcester, Mass.	40
Whitney, Chas. S.	Fitchburg, Mass.	8
Wilson, Mrs. Jos. S.	Fitchburg, Mass.	20
Wilson, Jos. S. (Eliza Wilson, Exc.)	Fitchburg, Mass.	44
Wetmore, Edwin D.	Lebanon, Conn.	11
Woodward, S. E.	67 Prichard Street, Fitchburg, Mass.	10
Williams, Ellen	Northboro, Mass.	12
Winch, Leonard. (R. W. Harwood, Adm'r.)	Natick, Mass.	10
Whitney, James.	Natick, Mass.	5
Winch, Valetta A.	Natick, Mass.	4
Wakeman, Virginia D. (Now Mrs. W. B. Van Wagener.)	Southport, Conn.	20
Wakeman, Mrs. Maurice.	Southport, Conn.	20
Wood, Chas. E.	Northboro, Mass.	4
Whipple, Cornelia.	Faribault, Minn.	4
Wilcox, W. F.	Deep River, Conn.	20
Wright, John Q.	Fitchburg, Mass.	40
Wilson, Esther M.	P. O. Box 2355, New York City.	20
Wheeler, Alice B.	Worcester, Mass. (?)	230
Whitney, Harrison B. (Francella Whitney, Exc.	Leominster, Mass.	10
Whitney, Chas. S.	Westminster, Mass.	10
Wilkins, Mrs. E. A.	Westport, Conn.	56
Weissbach, Joseph	Boston, Mass.	480
Young, Sarepta	Mansfield Centre, Conn.	40
Total Number of Shares		42,594

Name.	Address.	No. shares.	When transferred.	To whom transferred.	Address.	No. shares.
Wheeler, Rebecca B.	Worcester, Mass.	230	Sept. 12, 1889	Alice B. Wheeler	Worcester, Mass.	130
			Sept. 16, 1889	Alice B. Wheeler	Worcester, Mass.	100
Carter Estate, Geo. P. By James C. Carter, Wm. B. Weston, Edwin Dresser, Geo. E. Carter, Ex'rs.	Cambridgeport, Mass.	100	Jan. 17, 1890	Edwin Dresser, James C. Carter, Geo. E. Carter, Trustees for Nellie M. Clark.	Cambridgeport, Mass.	50
" " "			Jan. 17, 1890	Edwin Dresser, James C. Carter, Geo. E. Carter, Trustees for Fannie E. Porter.	Cambridgeport, Mass.	50
" " "	Cambridgeport, Mass.	100	Jan. 17, 1890	Edwin Dresser, James C. Carter, Geo. E. Carter, Trustees for Chas. H. Carter.	Cambridgeport, Mass.	50
			Jan. 17, 1890	Geo. E. Carter	Exchange Bdg. Boston,	50
Geer, Jas. L.	Norwich, Conn.	100				
Geer, Mrs. Jas. L.	Norwich, Conn.	20				
Geer, Rob't	Albany, N. Y.	60				
Geer, Rob't	Albany, N. Y.	10				
Geer, Rob't, Trustee	Albany, N. Y.	4	Feb. 5, 1890	D. B. Dewey, E. D. Buffington and D. N. Morgan, Trustees.		320
Geer, Ellen	Norwich, Conn.	40				
Geer, Fred L.	Albany, N. Y.	6				
Geer, Lucy	Norwich, Conn.	20				
Bailey, Sarah M.	Norwich, Conn.	40				
Geer, Abby	Norwich, Conn.	20				
			March 3, 1890	Harrison B. Whitney	Leominster, Mass.	10
			March 3, 1890	Ellen N. Day	Worcester, Mass.	10
Whitney, Harrison J. (Hamilton Mayo, Adm.)	Westminster, Mass.	40	March 3, 1890	John M. Lockey as Guardian of Mary E. Burgess.	Leominster, Mass.	10
			March 3, 1890	Chas. S. Whitney	Westminster, Mass.	10
Wheeler, Alfred M. By Mary E. Bannister, Adm'x.	Fitchburg, Mass.	20	July 21, 1890	Mrs. Mary E. Bannister	Fitchburg, Mass.	20
Campbell, Jas. S. By Jennie S. Campbell, Adm'x.	Albany, N. Y.	20	Sept. 30, 1890	Mrs. Jennie Campbell	Albany, N. Y.	20
Cox, Mrs. Caroline E.	Melrose, Mass.	20	Oct. 23, 1890	John C. Batchelder	Danvers, Mass.	20
Bowker, Mrs. Francis A.	Melrose, Mass.	20	Oct. 23, 1890	Edwin C. Briggs	West Scituate, Mass.	20
Merritt, Dexter P.	East Templeton, Mass.	30	Nov. 15, 1890	Monroe D. Merritt	East Templeton, Mass.	30
Fuller, Thos. H.	1613 Florida Ave, Washington, D. C.	33	Nov. 24, 1890	Robert B. Fuller	Birmingham, Conn.	33
Spalding, Miles	Groton, Mass.	10	Oct. 10, 1891	Frank Mason	Groton, Mass.	10
Spalding, Mary S.	Groton, Mass.	2		Frank Mason	Groton, Mass.	2

Ayer, James. By James B. Ayer, Admr.	Boston, Mass.	20	March	11, 1892	Mrs. Mary A. Ayer Jas. B. Ayer	53 Mount Vernon St., Boston. 53 Mount Vernon St., Boston.	7 13
Dewey, Buffington & Morgan, Trustees.		8	April	22, 1892	Dan'l Sherwood	Hartford, Conn.	8
Dewey, Buffington & Morgan, Trustees.		26	April	22, 1892	W. S. Goodhue	183 South Water St., Chicago.	26
Dewey, Buffington & Morgan, Trustees.		120	April	22, 1892	Geo. W. Stewart Rufus W. Bunnell Wm. C. Peffers A. M. Couch	Newtown, Conn. Bridgeport, Conn. New Fairfield, Conn. New Fairfield, Conn.	20 10 10 80
Dewey, Hersey & Morgan, Trustees.		158	April	30, 1892	Adolph Bernheimer Virginia L. W. Fox* Dewey, Buffington & Morgan, Trustees	51 White St, New York "The Richmond," Washington, D. C.	100 28 30
Dewey, Hersey & Morgan, Trustees.		10	May	5, 1892	S. R. Keeler	Bridgeport, Conn.	10
Dewey, Bouve & Morgan, Trustees Dewey, Buffington & Morgan, Trustees.		602 320	May May	5, 1892 5, 1892	Edward H. Nash Andrew C. Nash Edward A. Nash D. N. Morgan Frederick J. Banks	Bridgeport, Conn. Westport, Conn. Westport, Conn. Westport, Conn. Bridgeport, Conn. Bridgeport, Conn.	400 200 40 240 22
Dewey, Hersey & Morgan, Trustees.		45	May	23, 1892	Chas. A. Scruton Lyman H. Goodnow, Trustee Dewey, Buffington & Morgan, Trustees	Arkansas City, Kan. Fitchburg, Mass. Stillwater, Minn.	20 30 15 2,060
Dewey, Hersey & Morgan, Trustees.		2,060	May	24, 1892	The Minnesota Commercial Co.	Stillwater, Minn.	13,708
Dewey, Hersey & Morgan, Trustees.		13,744	May	24, 1892	The Minnesota Commercial Co. Mrs. Julia S. Very Dewey, Buffington & Morgan, Trustees	Hartford, Conn. Stillwater, Minn.	9 27 26
125 Goodhue, W. S.	183 S. Water Street, Chicago, Ill.	26	May	27, 1892	The Minnesota Commercial Co.	New Haven, Conn.	30
Dewey, Buffington & Morgan, Trustees.		40	May	28, 1892	L. Jackson Lake Dewey, Buffington & Morgan, Trustees	Norwich, Conn.	10 100
First National Bank.	Norwich, Conn.	100	June	1, 1892	Frank S. Jerome	Southport, Conn.	14
Dewey, Bouve & Morgan, Trustees.		40	June	6, 1892	E. C. Sherwood, Ex'r Estate of Mrs. Abbie Martinson. Dewey, Buffington & Morgan, Trustees		26 10
Fuller, Rob't B.	Birmingham, Conn.	10	Sept.	5, 1892	Luther Fuller	1613 Florida Ave., Washington, D. C.	23
Fuller, Rob't B.	Birmingham, Conn.	23	Sept.	5, 1892	Luther Fuller	1613 Florida Ave., Washington, D. C.	20
Dewey, Bouve & Morgan, Trustees.		98	Oct.	1, 1892	Mrs. Maurice Wakeman Mrs. W. B. Van Wagener* Dewey, Buffington & Morgan, Trustees	Southport, Conn. Southport, Conn.	20 58 100
Dewey, Hersey & Morgan, Trustees.		220	Nov.	1, 1892	Julius Kohn The Minnesota Commercial Co. David Bankhead	44 Broad St., N. Y. Stillwater, Minn. Pelham, N. Y.	120 50 50
Dewey, Hersey & Morgan, Trustees.		100	Nov.	5, 1892	Dewey, Buffington & Morgan, Trustees Isaac Bernheimer Simon Bernheimer Dewey, Buffington & Morgan, Trustees	320 Broadway, N. Y. 320 Broadway, N. Y.	200 200 200
Dewey, Hersey & Morgan, Trustees.		600	Dec.	7, 1892			

* Nee Virginia D. Wakeman.

Statement Showing Transfers of Common Stock—Continued.

Name.	Address.	No. shares.	When transferred.	To whom transferred.	Address.	No. shares.
				Sarah M. Bailey (Lucy Geer, Executrix).	Norwich, Conn.	40
				Ellen Geer	Norwich, Conn.	90
				Lucy Geer	Norwich, Conn.	90
				Fred L. Geer	Albany, N. Y.	6
Dewey, Hersey & Morgan, Trustees		530	Dec. 16, 1892	Arthur H. Geer	Albany, N. Y.	4
				Robert Geer	Albany, N. Y.	70
				Abby Geer	Norwich, Conn	20
				Geo. B. Bonton, M. D.	Westport, Conn.	100
				Modora H. Morgan	Bridgeport, Conn.	10
Dewey, Bouve & Morgan, Trustees		100	May 6, 1893	Dewey, Buffington & Morgan, Trustees		100
Banks Estate, Ebenezer Burr, Trustee.	Bridgeport, Conn.	20	June 5, 1893	Dewey, Buffington & Morgan, Trustees		160
				Ebenezer Burr, Trustee of Estate of David Banks.	Bridgeport, Conn.	20
				John Griffin	Newtown, Conn., P. O. Cold Springs.	50
Dewey, Hersey & Morgan, Trustees		231	June 5, 1893	Geo. Griffin	Newtown, Conn., P. O. Cold Springs.	20
				Bruce N. Griffin	Shelton, Conn.	120
				Marshall H. Sears	Newtown, Conn	10
				Dewey, Buffington & Morgan, Trustees		31
				Mrs. Ellen A. Bowers	Clinton, Mass.	20
				Mrs. Abbie T. Frost	Fitchburg, Mass.	10
				Roger P. Frost	Fitchburg, Mass.	20
				Mary J. N. Fairbanks†	Fitchburg, Mass.	100
				Sarah D. Fiske	Hingham, Mass.	2
				Mrs. E. A. Wilkins	Westport, Conn	6
				Amelia R. Nash	Westport, Conn	6
				Mary A. E. King	No. Leominster, Mass.	20
				The Minnesota Commercial Co.	Stillwater, Minn.	400
				Alfred T. Goodsell	Westport, Conn	12
				Armenia H. Simmons	Bridgeport, Conn.	80
Dewey, Bouve & Morgan, Trustees.		900	Sept. 12, 1893	Andrew B. Curtis	Stepney Depot, Conn.	20
				Susan B. Butters	469 Westford St., Lowell, Mass.	10
				Mary A. Toucey, Alfred B. Beers, Att'y for Executrix.	Bridgeport, Conn.	10
				Mrs. Sarah J. Philipps, now Mrs. Sarah J. Cook.	50 Nassau Street, Fitchburg, Mass.	10
				James A. Neally	Providence, R. I.	20
				Celia Curtis	Stratford, Conn.	14
				Mrs. Martha R. Hillman	Barre, Mass.	20
				Mrs. Mary E. Gibbs	60 Erskine Street, Detroit, Mich.	100
				W. H. Millard	Delhi, N. Y.	20

† Walter A. Fairbanks, Exec.

Dewey, Hersey & Morgan, Trustees	1,200	Sept.	13, 1893	The Minnesota Commercial Co.	Stillwater, Minn.	1,200
126				O. H. Lawrence	Fitchburg, Mass	35
				Emily Beers	Southport, Conn	10
				Phebe Somers	Leominster, Mass	20
				Daniel Nash	Norwalk, Conn.	10
Dewey, Hersey & Morgan, Trustees	694	Sept.	13, 1893	Eunice Jennison	Fitchburg, Mass.	24
				Emily Booth	Stratford, Conn.	5
				Geo. H. Cutler	Fitchburg, Mass.	70
				Tarrant Cutler	Fitchburg, Mass.	100
				Edmund Rice, Jr.	Olympia, Washington	400
				Chas. W. Nource	Marlboro, Mass.	20
				Wilbur A. Gleason	Bridgeport, Conn.	4
				Mary F. Daniels	Fitchburg, Mass.	20
				Geo. F. Daniels	Fitchburg, Mass.	20
				Wm. M. Bright	Bangor, Me.	20
				Lovell Williams	Fitchburg, Mass.	100
				Eliza M. Jennings	Westport, Conn.	20
				C. C Stratton, Trustee	Fitchburg, Mass	50
				David B. Booth	Stratford, Conn.	20
				Mary A. Lacey	Plattsville, Conn.	20
				Eliza J. Murphy	265 East Main St, Bridgeport, Conn.	10
				Geo. H. Millard	Delhi, N. Y.	40
				Mrs. Adeline A. Prentiss	Windham, Vt.	16
Dewey, Hersey & Morgan, Trustees	535	Oct.	4 1893	Geo. A. Bright	Bangor, Me.	20
				Mary G. Bright	Bangor, Me.	11
				A. E. & J. M. B. Bright, Exc. Est. Jno. Bright	Bangor, Me.	20
				J. D. Littlehale, Executor	Fitchburg, Mass.	6
				W. F. Wilcox	Deep River, Conn.	20
				L. B. Cushing	Newburyport, Mass.	50
				Margaret W. Cushing	Newburyport, Mass.	10
				Fannie C Cushing	Newburyport, Mass.	10
				Ellen V. Hamlin	Bangor, Me.	12
				Chas. Hamlin	Bangor, Me.	12
				Hannibal E Hamlin	Ellsworth, Me.	12
				Frank Hamlin	107 Dearborn St., Chicago, Ill.	12
Dewey, Hersey & Morgan, Trustees	5	Oct.	4, 1893	Julia A. Holcomb	Bridgeport, Conn.	5
				The Minnesota Commercial Co	Stillwater, Minn.	200
				" " " "	Stillwater, Minn.	100
				" " " "	Stillwater, Minn.	100
				E. M. Littlefield	Pawtucket, R. I.	20
				The Minnesota Commercial Co.	Stillwater, Minn.	20
Dewey, Hersey & Morgan, Trustees	560	Nov.	28, 1893	Mary B. Tousey (Union Trust Co.), Executors.	So. Broadway, N. Y.	20
				Ella F. Pierce	No. Leominster, Mass.	20
				Geo. H. Turney	Birmingham, Conn.	10
				Mrs. Mary A. Breck	E. Somerville, Mass.	20
				Roderick P. Curtis	Bridgeport, Conn.	25
				Lewis B. Curtis	Bridgeport, Conn.	25

Statement Showing Transfers of Common Stock—Continued.

Name.	Address.	No. shares.	When transferred.	To whom transferred.	Address.	No. shares.
Dewey, Hersey & Morgan, Trustees		2,786	March 12, 1894	Mrs. E. H. Schenck	Care of Geo. Montague, Pres. 2d Nat'l Bank, N. Y.	10
				Charles W. B. Putnam, Adm.	Fitchburg, Mass.	160
				Mrs. S. J. Sawtelle	Care of H. E. Woods, Fitchburg, Mass.	15
				Nettie S. Childs	Care of Ruthven Childs, Hillsboro, N. H.	20
				Anna G. P. Rodman	1081 Chapel Street, New Haven, Conn.	10
				Julia C. Schenk, Executrix	Care of W. W. Keen, Philadelphia, Pa.	80
				Esther L. Curtis	157 E. Main Street, Bridgeport, Conn.	10
Schenck, Julia C., Executor	Care W. W. Keen, Philadelphia, Pa.	80	March 25, 1894	Dewey, Buffington & Morgan, Trustees		2,481
				The Minnesota Commercial Co.	Stillwater, Minn.	80
Dewey, Hersey & Morgan, Trustees		7,987	June 6, 1894	The Minnesota Commercial Co.	Stillwater, Minn.	78
				Esther L. Curtis	Bridgeport, Conn.	5
Haskell, Mary A. By Chas. A. Swan, Adm.	Clinton, Mass.	16	Aug. 3, 1894	Dewey, Buffington & Morgan, Trustees		7,704
				Eunice H. Haskell	Clinton, Mass.	10
127						
Dewey, Buffington & Morgan, Trustees		160	Oct. 18, 1894	C. E. Griffing, Adm. of Andrew Northrup.	Danbury, Conn.	30
				C. E. Griffing, Adm. of Kate M. Northrup.	Danbury, Conn.	10
				Dewey, Buffington & Morgan, Trustees		120
				David Tozer	Stillwater, Minn.	150
				Victor Brett, Administrator	Bangor, Me.	25
				The Minnesota Commercial Co.	Stillwater, Minn.	60
				Samuel T. Rogers	166 John Street, Bridgeport, Conn.	32
Dewey, Buffington & Morgan, Trustees		2,481	Nov. 5, 1894	M. Effie Glover	Danbury, Conn.	10
				Betsey A. Glover	Danbury, Conn.	10
				M. Elizabeth Glover	Danbury, Conn.	10
				Jerome Orcutt	Bridgeport, Conn.	10
				Andrew B. Sherman	Fitchburg, Mass.	100
				L. C. Tyler, Trustee	Bangor, Me.	8
				Clark B. Cochrane	Antrim, N. H.	10
				Dewey, Buffington & Morgan, Trustees		2,096

Dewey, Buffington & Morgan, Trustees.		351	Dec.	26, 1894	Julia F. Jessup	Southport, Conn.	25
					Henry R. Tracy	16 Worcester Square, Boston, Mass.	100
					Isabella M. Tracy	Chautauqua, N. Y.	20
					Louis N. Booth	Bridgeport, Conn.	25
					Emeline Dibble	Bridgeport, Conn.	28
					Letitia G. Chandler	Detroit, Mich.	60
					Mary E. Hale	Ellsworth, Me.	60
					Jno. F. Slater	Bangor, Me.	10
					Mary B. Glover	Newtown, Conn.	20
Dewey, Buffington & Morgan, Trustees.		100	Dec.	27, 1894	Dewey, Buffington & Morgan, Trustees		3
					Geo. N. Proctor	Fitchburg, Mass.	100
					Chas. G. Sanford	Bridgeport, Conn.	50
					Carrie G. Clark Paret	La Conca Verde, near Stroudsburg, Pa., Monroe Co., Box 516.	40
Dewey, Buffington & Morgan, Trustees.		120	Dec.	27, 1894			
					Benjamin A. Bulkley	Southport, Conn.	20
					Caleb C. Lowell	Bangor, Me.	19
					A. D. S. Bell	Equitable Bld., Boston.	480
Dewey, Buffington & Morgan, Trustees.		2,056	Feb.	12, 1895	Dewey, Buffington & Morgan, Trustees		1,576
					James L. Gould	295 Fairfield Ave., Bridgeport, Conn.	20
Dewey, Buffington & Morgan, Trustees.		30	April	22, 1895			10
					Dewey, Buffington & Morgan, Trustees		20
Littlefield, E. N.	Pawtucket, R. I.	20	May	13, 1895	Ida B. Littlefield	41 Wolcott Street, Pawtucket, R. I.	
					Rhode Island Society of Cincinnati	Wm. Delion King, Treasurer, Sandwich, Mass.	8
Dewey, Buffington & Morgan, Trustees.		58	June	10, 1895			50
					Dewey, Buffington & Morgan, Trustees		45
					The Fitchburg Home for Old Ladies	Fitchburg, Mass.	5
Dewey, Buffington & Morgan, Trustees.		50	July	8, 1895	Dewey, Buffington & Morgan, Trustees		30
Lake, D. Jackson.	New Haven, Conn.	30	Nov.	4, 1895	Catherine L. Lake	137 College Street, New Haven, Conn.	
					Joseph Weisbach	Boston, Mass.	480
Bell, A. D. S.	Boston, Mass.	480	Jan.	15, 1896	James N. Castle	Stillwater, Minn.	150
Tozer, David	Stillwater, Minn.	150	June	18, 1896	Susan N. Glover	Bridgeport, Conn.	20
Dewey, Buffington & Morgan, Trustees.		26	Feb.	20, 1897	Dewey, Buffington & Morgan, Trustees		6
					Henry H. Nourse	Marlboro, Mass.	20
Dewey, Buffington & Morgan, Trustees.		27	March	15, 1897	Dewey, Buffington & Morgan, Trustees		7
					Mrs. Julia V. Baker	Antrim, N. H.	6
Dewey, Buffington & Morgan, Trustees.		10	June	23, 1897	Dewey, Buffington & Morgan, Trustees		4
Bacon, Geo. Norval	Fiskdale, Mass.	10	Feb.	24, 1898	Jennie M. Bacon	Fiskdale, Mass.	10
Geo. M. Hitchcock, Adm.							
Ayer, Mrs. Mary A.	Boston, Mass.	7	March	21, 1898	Lemuel Bourne	Amboy, Ill.	6
Jas. P. Ayer, Executor.							
Ayer, Mrs. Mary A.	Boston, Mass.	4	March	21, 1898	James B. Ayer	53 Mount Vernon St., Boston.	5
Jas. P. Ayer, Executor.							
128					Daniel C. Nash	Norwalk, Conn.	50
Nash, Andrew C.	Westport, Conn.	200	Nov.	17, 1898	Edward A. Nash	Westport, Conn.	50
Dan'l C. Nash, Edward A. Nash, } Ex'rs.					Mrs. E. A. Wilkins	Westport, Conn.	50
					Mrs. Amelia R. Nash	Westport, Conn.	50

Statement Showing Transfers of Common Stock—Continued.

Name.	Address.	No. shares.	When transferred.	To whom transferred.	Address.	No. shares.
Cutler, Tarrant	Fitchburg, Mass.	100	Nov. 28, 1898	Mary E. Cutler	Fitchburg, Mass.	50
Clark A. Batchelder, Geo. H. Cutler, } Admr.				Geo. H. Cutler	Fitchburg, Mass.	50
Lincoln, Henry	Scotland, Conn.	20	April 14, 1899	Eva V. Dewing	Goldengate, Alameda Co., California.	20
By Flora J. Lyons, Admx.						
Thompson, E. R.	Norwich, Conn.	100	Nov. 15, 1899	Corinne B. Bidwell	Collinsville, Conn.	100
By O. E. Beckwith, Adm.						
Seaver, A. W.	Northboro, Mass.	27	Nov. 28, 1898	L. Holbrook, Executor, Estate of Susan H. Gale.	Box 536, New York	27
Att'y for Susan H. Gale by Anna M. Seaver, Executrix for A. W. Seaver.						
Comstock, S. G.	Moorehead, Minn.	60	Dec. 3, 1900	The Minnesota Commercial Co.	Stillwater, Minn.	60

129 EXHIBIT "B."

Name.	Amount.	Date from which interest is to be added.	
Elmer P. Howe, Boston, Mass.	$2,352.59	Aug. 9, 1901.	Note.
E. D. Buffington, Stillwater, Minn.	65,725.50	Apr. 3, 1901.	Judgment.
National State Capitol Bank, Concord, N. H.	16,811.39	Apr. 3, 1901.	Judgment.
Massachusetts Loan & Trust Company, Boston, Mass.	111,386.46	Apr. 15, 1901.	Judgment.
Freeman's National Bank, Boston, Mass.	1,236.50	May 16, 1901.	Judgment.
W. G. Bronson, Stillwater, Minn.	9,130.25	July 12, 1901.	Judgment.
A. T. Jenks, Stillwater, Minn	4,378.90	May 6, 1901.	Judgment.
American Loan & Trust Co., Boston, Mass.	2,340 00	Sept. 28, 1901.	Note.
L. C. Hyde *et al.*, exec., Boston, Mass.	126,937.75	Apr. 3, 1901.	Judgment.
Loan & Trust Saving Bank, Concord, N. H.	2,250 00	March 16, 1901.	Note.
Winchester National Bank, Winchester, N. H.	4,005.57	March 27, 1901.	"
National Revere Bank, Boston, Mass.	2,086.20	Oct. 8, 1900.	"
Manufacturers' National Bank, Boston, Mass.	283.50	Nov. 27, 1900.	"
Dime Savings Bank, Norwich, Conn.	556.20	March 19, 1900	"
E. A. Norcross, Fitchburg, Mass.	9,500.00	June 8, 1900.	"
First National Bank of Norwich, Norwich, Conn.	1,683.00	Aug. 6, 1900.	"
A. G. Folsom, Laconia, N. H.	216.00	Sept. 9, 1900.	"
M. F. Dickinson, Boston, Mass.	540.00	Mar. 7, 1900.	"
M. E. Gibbs, Detroit, Mich.	288.90	March 3, 1900.	"
National Grand Bank of Marblehead, Mass.	1,063.96	Since the date of intervention.	"
W. H. Lightener, receiver, St. Paul, Minn.	1,050.00	Dec. 6, 1900.	"
Lawrence National Bank, Lawrence, Mass.	2,105.90	Aug. 20, 1900.	"
Wachusett National Bank, Fitchburg, Mass.	12,035.05	Since the date of intervention.	"
Gustav Willius, receiver, St. Paul, Minn.	825.00	Since the date of intervention.	"
Merchants' National Bank, St. Paul, Minn.	2,938.07	May 6, 1901.	Judgment.
	$381,725.79		

130 EXHIBIT "C."

Names.	Amount.	Date from which interest is to be added.
John Hancock National Bank, Springfield, Mass.	$278.16	11/27/1900.
L. H. Goodnow, Fitchburg, Mass.	634.50	11/27/1900.
John S. Blodgett, Concord, N. H.	180.00	11/27/1900.
Benj. L. Bartlett, E. Deering, N. H.	422.00	3/22/1900.
Wm. S. Williams, Glastonbury, Conn.	288.90	4/2/1900.
Emery L. Bates, Fiskdale, Mass.	569.70	4/20/1900.
First National Bank of Oxford, N. Y.	1,073.14	12/20/1900.
Jersey Shore Banking Company, Jersey Shore, Pa.	278.10	12/20/1900.
Merchants National Bank, Norwich, Conn.	1,063.96	8/20/1900.
Mrs. Louvan C. Hyde, Boston, Mass.	540.00	4/6/1900.
Blackstone National Bank, Boston, Mass.	2,086.20	8/27/1900.
First National Bank, Provincetown, Mass.	1,046.72	9/15/1900.
Bristol County National Bank, Taunton, Mass.	467.10	9/21/1900.
Gloucester National Bank, Gloucester, Mass.	278.10	10/10/1900.
Northboro National Bank, Northboro, Mass.	536.73	10/10/1900.
Mechanic's National Bank, New Bedford, Mass.	2,155.26	4/10/1901.
Old Colony National Bank, Plymouth, Mass.	5,131.86	4/10/1901.
A. D. Putnam, Esq., Danielson, Conn.	359.07	4/10/1901.
Charles P. Backus, Danielson, Conn.	359.07	4/10/1901.
C. S. Burlingame, Danielson, Conn.	359.07	4/10/1901.
Monument National Bank, Charlestown, Mass.	230.00	12/13/1900.
Belknap Savings Bank, Laconia, N. H.	5,100.00	
Bristol County Savings Bank, Taunton, Mass.	14.01	9/15/1900.
Accounts.		
William M. Mason, Boston, Mass.	19.23	
Francis A. Osborn, Boston, Mass.	208.33	
	$23,679.15	

131 I. Simon Bernheimer died in the City of New York, on April 26, 1900, leaving property in the State of Minnesota, and leaving a Last Will, which was admitted to probate in the office of the Surrogate of the County of New York, having jurisdiction of the same on May 18th, 1900; and letters testamentary were thereupon issued to these defendants, who duly qualified thereunder and still remain such Executors.

The said Will of Simon Bernheimer was duly proved and recorded in the probate Court of the County of Ramsey, in the State of Minnesota, having jurisdiction of the same, and Letters Testamentary were thereupon duly issued by such Court to Jacob S. Bernheimer and Mayer S. Bernheimer, who duly qualified thereunder, which letters were issued on September 7th, 1900. The said Jacob S. Bernheimer died on April 27, 1902, and the said Mayer S. Bernheimer still remains as such Executor.

On September 7th, 1900, the following order was duly made by the Probate Court of the County of Ramsey:

In Probate Court.

STATE OF MINNESOTA, *County of Ramsey*, ss:

In the Matter of the Estate of SIMON BERNHEIMER, Deceased.

Letters Testamentary on the Estate of Simon Bernheimer, deceased, late of the City and County of New York and State of New York, being granted to Mayer S. Bernheimer, and Jacob S. Bernheimer,

It is ordered that six months be and the same is hereby allowed from and after the date of this Order in which all persons having claims or demands against the said deceased are required to file the same in the Probate Court of said County for examination and allowance, or be forever barred,

It is further ordered, *at* the first Monday in April, 1901, at 10 o'clock A. M., at a General Term of said Probate Court to be
132 held at the Court House, in the City of St. Paul, in said County, be and the same here is appointed as the time and place when and where the said Probate Court will examine and adjust said claims and demands.

And it is further ordered, that notice of such hearing be given to all creditors and persons interested in said Estate by forthwith publishing this Order once in each week for three successive weeks in the St. Paul Dispatch, a daily newspaper printed and published in said County.

Dated, at St. Paul, this 7th day of September, 1900.

By the Court:

E. W. BAZILLE,
Judge of Probate.

[L. S.]

HADLEY & ARMSTRONG,
Att'ys for Executors.

The notice required by the said order was duly published.

On March 23rd, 1903, the following decree was duly made by the said Probate Court of Ramsey County:

In Probate Court.

Special Term, March 23, 1903.

"STATE OF MINNESOTA, *County of Ramsey*, ss:

In the Matter of the Estate of SIMON BERNHEIMER, Deceased.

It appearing to the Court here, on satisfactory proofs and the evidence, that the funeral charges, expenses of last sickness of said deceased, and the cost of administration of said estate, have been fully paid, and that all debts existing against said deceased, or

allowed by the Court pursuant to law, as well as the specific legacies of personal property made by the will of said deceased, have also been fully paid and satisfied, and that the said estate has been fully administered, as by the final account of Mayer S. Bernheimer, as surviving executor of the last Will and Testament of said deceased, duly admitted and allowed by this Court, pursuant to due notice given and served will appear, reference being had thereto.

133 And it further appearing, that due notice of the application for this final decree in said matter, assigning the estate to the person thereto entitled by law, has likewise been duly given and served pursuant to the law in such case made and provided and decided;

And it further appearing that said deceased died testate, and that the residue of said estate consists of the following described real estate, to wit:

(Here follows description of real estate owned by said Simon Bernheimer in Minnesota.)

And it further appearing that by the terms of his last will and testament said Simon Bernheimer devised all the rest and residue of his property and estate, including his interest in the real estate above described to his sons Jacob S. Bernheimer, Mayer S. Bernheimer, and Lorin S. Bernheimer, the survivor or survivors of them, upon the conditions and subject to the trusts as in said last will and testament set forth and expressed.

And it further appearing that said Jacob S. Bernheimer one of the said trustees departed this life on the 27th day of April, 1902, and that said Mayer S. Bernheimer and Lorin S. Bernheimer are the surviving trustees and devisees named in and appointed by said will and testament;

Now therefore, on the petition of said surviving executor, and pursuant to due notice and the law in such case provided,

It is ordered, adjudged and decreed, and this Court by virtue of the power and authority vested in the same by law doth hereby order, adjudge and decree, that all and singular of the above described real and personal estate, and all other the estate of said deceased in the State of Minnesota be, and the same is hereby assigned to and vested in the said Mayer S. Bernheimer and Lorin S. Bernheimer, as trustees upon the condition and subject to the trusts expressed in the last Will and Testament of said Simon Bernheimer, deceased, which will has been heretofore allowed by and admitted to probate in this Court; without prejudice however, to any lawful conveyance of said real estate or any part thereof by said persons or any of them as executor or trustees.

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining, to the above named persons and their survivors, successors and assigns forever.

By the Court,

EDMUND M. BAZILLE,

[L. S.] *Judge of Probate, Ramsey Co., Minn.*

Dated, June 30, 1903.

134 II. That Simon Bernheimer for many years prior to his death, and these defendants, at all of the times mentioned in the complaint, and for many years prior thereto were residents of the State of New York, and that neither said Simon Bernheimer nor any of these defendants had ever resided in the State of Minnesota, nor been served with process therein.

That no claim or demand upon the cause of action alleged upon the complaint, or upon any of the claims of causes of action to satisfy which the assessment of the shareholders of said Minnesota Thresher Manufacturing Company was made, nor any claim upon any liability of the said Simon Bernheimer as a stockholder of said Minnesota Thresher Manufacturing Company, was ever presented within the time fixed in the said order for creditors to present claims, or at any time to the said Probate Court or to any Probate Court, or to these defendants or to any of them.

III. That in none of the actions or proceedings had in the State of Minnesota was any notice or process in the name or address of these defendants either individually or as Executors ever issued or served, or published, either in the State of Minnesota, or elsewhere; but the notices of the proceedings herein referred to were mailed by the Receiver, addressed to Simon Bernheimer, 320 Broadway, New York City, that being his address on the books of the Minnesota Thresher Manufacturing Company/ that the receiver did not know of the death of Simon Bernheimer or of his will, until after the mailing of said notice and shortly before the commencement of this action.

135 **Names and Residences of All Persons Claiming to be Creditors of the Minnesota Thresher Manufacturing Company on August 16, 1901, Whose Claims were Presented to and Allowed by the Supreme Court of Minnesota in the Assessment Proceeding and Nature of their Claims.**

Notes.

Name.	Address.	Date.	Date int. paid to.	Am't of note.
Manufacturers' Nat. Bk.....	Boston, Mass.....	11-27-98	11-27-00	283.50
John Hancock Nat. Bk.....	Springfield, Mass.	3- 7-00	With Int.	278.10
L. H. Goodnow.....	Fitchburg, Mass..	"	"	634.50
T. S. Kirkwood.....	Chicago, Ill.....	"	"	1,800.00
Elmer P. Howe.....	Boston, Mass	3-16-00	"	360.00
M. F. Dickinson, Jr., 53 State Street.	"	3- 7-00	"	540 00
Loan & Trust Sav. Bk.....	Concord, N. H...	3-16-00	"	2,250.00
Dime Savings Bank.....	Norwich, Conn .	"	"	556.20
John S. Blodgett, c. o. Nat. St. Cap. Bk.	Concord, N. H...	3-21-00	"	180 00
Mrs. Mary E. Gibbs, 60 Erskine St.	Detroit, Mich....	3-22-00	....	288.90
Benj. L. Bartlett.....	E. Deering, N. H.	"	.....	422.10
Wm. S. Williams.....	So. Glastonbury, Conn.	4- 2-00	"	288.90
Mrs. Lowan C. Hyde, Exchange Bldg.	Boston, Mass.....	4- 6-00	"	540.00
Est. of Henry D. Hyde, Exchange Bldg.	"	"	"	900.00
Emery L. Bates.....	Fiskdale, Mass...	4-20-00	"	569.70
Amer. Loan & Trust Co.....	Boston, Mass	5-26-00	9-26-00	2,340.00
Nat. Revere Bank.	Boston, Mass ...	6- 8-00	10- 8-00	2,086.20

	Name.	Address.	Date.	Date int. paid to.	Am't of note.
	Wachusett Nat. Bank	Fitchburg, Mass.	7-30-00	11-30-00	2,250.00
	" "	" "	7-14-00		
	" "	" "	(Bal.)	11-14-00	9,012.50
	" "	" "	7-14-00	With Int.	209.00
	" "	" "	7-30-00	"	45.00
	First Nat. Bank	Norwich, Conn.	8- 6-00	12- 6-00	1,650.00
	" "	" "	"	With Int.	33.00
	" "	Oxford, N. Y.	8-20-00	12-20-00	1,052.10
	" "	" "	"	With Int.	21.04
	Lawrence Nat. Bank	Lawrence, Mass.	"	12-20-00	2,064.60
	" "	" "	"	With Int.	41.30
	Jersey Shore Banking Co	Jersey Shore, Pa.	"	12-20-00	278.10
	Merchants' Nat. Bank	Norwich, Conn.	"	"	1,043.10
	" "	" "	"	With Int.	20.86
	Nat. Grand Bank	Marblehead, Mass.	"	12-20-00	1,043.10
	" "	" "	"	With Int.	20.86
	Blackstone Nat. Bank	Boston, Mass	12-26-99	18-27-00	2,086.20
	First Nat. Bank	Provincetown, Mass.	9-10-00	With Int.	1,016.10
	" "	"	9-15-00	"	30.32
	Bristol Co. Nat. Bk	Taunton, Mass.	9-21-00	"	467.10
	Winchester Nat. Bk.	Winchester, N. H.	9-27-00	3-27-01	3,886.90
	" "	" "	9-15-00	With Int.	116.67
	Forward				$40,699.45
136	Forward total am't of judgments				337,451.91
	Forward				40,699.45
	Gloucester Nat. Bank	Gloucester, Mass.	10-10-00	With Int.	270.00
	" "	" "	"	"	8.10
	Northborough Nat. Bank	Northboro, Mass.	"	4-10-01	521.10
	" "	" "	"	With Int.	15.63
	Mechanics' Nat. Bank	New Bedford, Mass.		4-10-01	2,092.50
	" "	" "		With Int.	62.76
	Old Colony Nat. Bank	Plymouth, Mass.	"	4-10-01	4,982.40
	" "	" "	"	With Int.	149.46
	A. G. Folsom	Laconia, N. H.	9-21-00	"	209.70
	" "	" "	9-15-00	"	6.50
	A. D. Putnam	Danielson, Conn.	10-10-00	4-10-01	348.60
	" "	" "	"	With Int.	10.47
	Chas. P. Backus	" "	"	4-10-01	348.60
	" "	" "	"	With Int.	10.47
	C. S. Burlingame	" "	"	4-10-01	348.60
	" "	" "	"	With Int.	10.47
	Amasa Norcross Est.	Fitchburg, Mass.	7- 1-93	1- 1-01	10,000.00
	Bank of Minnesota	St. Paul, Minn.	12- 7-96	12- 5-00	1,050.00
	Germania Bank	" "	4- 1-99	11-22-00	825.00
	Monument Nat. Bank	Charlestown, Mass.	7-20-00	With Int.	230.00
	Belknap Savings Bank	Laconia, N. H.	8-13-00	12-13-00	5,000.00
	" "	" "	"	With Int.	100.00
	Bristol Co. Sav. Bank	Taunton, Mass.	9-15-00	"	14.01
					67,313.62

Accounts for Salaries and Expenses.

Name.	Address.	
Wm. M. Mason	520 Tremont Bldg., Boston, Mass.	19.23
Francis A. Osborn	43 Milk St., " "	208.33
E. D. Buffington	Stillwater, Minn.	192.30
		419.86
Grand total		405,185.39

137 The following is a list of the notes upon which the above judgments were rendered:

Name of payee.				
E. D. Buffington	Jan. 5, 1900,	$18,990.00	Int. p'd to Sept. 1, 1900,	
	" " "	35,000.00	" " " July 1, "	
	" "	35,000.00	" " April 1, "	
			and 30,729.17 on principal.	
	Feb. 1, 1900,	4,500.00	Int. p'd to May 1, 1900	
	June 4, 1900	5,000.00	" " Oct. 4 "	
			1,382.50 on principal Nov. 14, 1900	
Nat'l State Capital Bank of Concord, N. H.	July 5, 1900,	1,000.00	Int. p'd to Nov. 5, 1900	
	" 10, 1900,	2,500.00	" " " 18, "	
	Aug. 13, 1900,	5,000.00	" " Dec. 13, "	
	" " "	100.00		
Lowan C. Hyde, Benj. D. Hyde, Ex'rs Est. Henry D. Hyde.	April 26, 1900	4,123.80	" " Aug. 27 "	
	July 17, 1893,	15,000.00	" " April 1, "	
	July 24, 1893,	15,000.00	" " " "	
	Jan. 1, 1894,	5,000.00	" " " "	
	Jan. 4, 1897,	12,500.00	" " " "	
	Jan. 5, 1897,	12,500.00	" " " "	
	Jan. 12, 1897,	25,000.00	" " Dec. 31 "	
	Jan. 6, 1897	12,500.00	" " Sept. 30, "	
	Jan. 6, 1897	12,500.00	" " " "	
	Feb. 1, 1897,	10,000.00	" " Nov. 6 "	
	July 6, 1900,	200.00	" " Oct. 1, "	
Mass. Loan & Trust Co.	Feb. 2, 1897,	122,500.00	Int. p'd to Aug. 31, 1900	
			13,306.95 on prin. Dec. 21, 1897,	
			11,948.75 on prin. Nov. 30, 1900,	
Merchants' Nat'l Bank	March 23, 1896,	9,000.00	Int. p'd to Aug. 31, 1890	
Freeman's Nat'l Bank	Nov. 1, 1900,	2,900.00	" " M'ch 4, 1901.	
A. T. Jenks	Aug. 20, 1900,	1,200.00	" " Dec. 29, 1900.	
W. G. Bronson	Feb. 14, 1898,	4,162.00	" " Aug. 27, "	
	Jan. 30, 1899,	2,600.00	" " Oct. 1, 1899	
	Jan. 30, 1899,	6,168.69	" " Aug. 1, 1900,	

The plaintiff will furnish a statement of the due dates of the notes above mentioned and of any notes of which these are renewals, so far as these dates are shown by the books and records of the Minnesota Thresher Company in the possession of the receiver.

WILSON & WALLIS,
Plaintiff's Attorneys.
JACOB & TANZER,
Def'ts' Att'ys.

[Endorsed:] Wilson & Wallis, Plaintiff's Attorneys. Jacob & Tanzer, Def'ts' Att'ys.

138 Counsel for the plaintiff produces letter of the plaintiff containing a statement of the matters referred to in the closing paragraph of the stipulation, Defendant's Exhibit 1, to wit: a statement of the due dates of the notes mentioned in the stipulation and of the notes of which they are renewals so far as those dates are shown by the books and records of the Minnesota Thresher Manufacturing Company, in the possession of the Receiver, and Defendant's counsel offers the same in evidence.

Mr. WILSON: Counsel for plaintiff objects, not on the score of incompetency, but merely on the ground of irrelevancy and immateriality; in other words, the document is admitted as sufficient proof of the facts that it states, without question.

Objection overruled.

Marked Defendant's Exhibit 2, and is as follows:

139 Office of Theodore R. Converse, Receiver Minnesota Thresher Manufacturing Co., Stillwater, Minnesota.

MAY 25, 1905.

Mr. George E. Coney, Attorney at law, 48 Wall St., New York.

MY DEAR MR. CONEY: On the 20th inst. I received from Mr. Severance the memorandum you sent him, which I return herewith, covering the list of notes upon which judgments were rendered, with the request that I send you the information referred to on same in order that you might put it in the stipulation. Owing to Mr. Buffington's absence from his office, it has been impossible to find the data giving a full history of these judgment notes, but as he has informed me that practically the same information that you need was sent to Mr. B. D. Hyde, of Boston, by Mr. Severance, I herewith enclose a copy of the letter written by Mr. Severance June 4th, 1904, which I think will answer the requirements as well as afford any additional information as regards the notes in favor of other creditors, which may be of possible service to you some time.

Referring to your memorandum, I would further add that all the notes against which I have marked a "D" are demand notes, and the *due dates* on the balance correspond to the various dates noted to which interest has been paid, with the following exceptions:

140 The two notes of $12,500 each, dated January 6th, 1897, in favor of the Hyde Estate, fell due on September 30th, 1899, instead of 1900; and the due date of the Freemans National Bank note should be December 23rd, 1900, rather than December 29th.

Further, the note in favor of the Massachusetts Loan & Trust Company, dated February 2nd, 1897, for $122,500 runs for two months, and the due date would accordingly be April 2nd, 1897.

I note further what is apparently a slight error in the date of the $2500 note in favor of the National State Capital Bank of Concord, New Hampshire. You have it as July 19th, and I think it should be July 18th, as you will see that this corresponds with the due date of November 18th, four months thereafter.

I believe this information will suffice, but if not, please call on me further. I am very glad to learn that there is a possibility of settling the Breslin and Cannon claim.

You have doubtless heard through Mr. Severance of the substantial progress Mr. Buffington is making toward recovery, for which we are very thankful. He is contemplating a trip to Connecticut with me next month, to testify in two of our cases there.

Very truly yours, T. R. CONVERSE.

Enclos.

141 The following is a list of the notes upon which the above judgments were rendered:

Name of payee.		Date of note.	Amount.	
E. D. Buffington	1	Jan. 5, 1900,	$1,590.00 D.	Int. pd. to Sept. 1, 1900.
	2	" "	35000.00 D.	" " " July 1, "
	3	" "	35000.00 D.	" " " April 1, " and 30,729.17 on principal.
	4	Feb. 1, 1900,	4500.00 D.	Int. pd. to May 1, 1900.
		June 4, 1900,	5000.00	" " " Oct. 4, " 1,332.50 on principal Nov. 14, 1900.
Nat'l State Capital Bank of Concord, N. H.		July 5, 1900,	1000.00	Int. pd. to Nov. 5, 1900.
		" 10, 1900,	2500.00	" " " " 18, 1900.
		Aug. 13, 1900,	5000.00	" " " Dec. 13, "
		"	100.00 D.	
Lowan C. Hyde, Benj. D. Hyde, Ex'rs Est. Henry D. Hyde.		April 26, 1900,	4123.00	" " " Aug. 27, "
		July 17, 1893,	15000.00 D.	" " " April 1, "
		July 24, 1893,	15000.00 D.	" " " " " "
		Jan. 1, 1894,	5000.00 D.	" " " " " "
		Jan. 4, 1897,	12500.00	" " " " " "
		Jan. 5, 1897,	12500.00	" " " " " "
		Jan. 12, 1897,	25000.00	" " " Dec. 31, "
		Jan. 6, 1897,	12500.00	" " " Sep. 30, "
		Jan. 6, 1897,	12500.00	" " " " " "
		Feb. 1, 1897,	10000.00	" " " Nov. 6, "
		July 6, 1900,	200.00 D.	" " " Oct. 1, "
Mass. Loan & Trust Co.		Feb. 2, 1897,	122500.00	Int. pd. to Aug. 31, 1900. 13,306.95 on prin. Dec. 31, 1897. 11,948.75 on prin. Nov. 30, 1900.
		March 25, 1896,	9900.00 D.	Int. pd. to Aug. 31, 1900.
Merchants' Nat'l Bank		Nov. 1, 1900,	2000.00	Int. pd. to M'ch 4, 1901.
Freeman's Nat'l Bank		Aug. 20, 1900,	1200.00	" " " Dec. 29, 1900.
A. T. Jenks		Feb. 14, 1898,	4162.00 D.	" " " Aug. 27, "
W. G. Bronson		Jan. 30, 1899,	2600.00 D.	" " " Oct. 1, 1899.
		Jan. 30, 1899,	6165.00 D.	" " " Aug. 1, 1900.

The plaintiff will furnish a statement of the due date of the notes above mentioned and of any notes of which these are renewals, so far as these dates are shown by the books and records of the Minnesota Thresher Manufacturing Company in the possession of the Receiver.

142 JUNE 4, 1904.

In re Claims Against Minnesota Thresher Manufacturing Company.

B. D. Hyde, Esq., Boston, Mass.

DEAR BEN: The first claim is one of E. D. Buffington, this claim is made up as follows:

A note of $18,990 dated January 5, 1900, which was a renewal of another note dated October 5, 1899, also made to Buffington, which note in turn was a renewal, several payments thereon having been made in the meantime of a $21,100 note made the 8th of May, 1894, to the Tremont National Bank of Boston. The renewal of this $21,100 note was sold to Mr. Buffington sometime during the year 1899.

The second cause of action making up the claim of Mr. Buffington was a note for $35,000 given to him on January 5, 1900. This note was a renewal of one made October 5, 1899, for the same amount to Mr. Buffington, which in turn was the amount of a note of $35,000 given on June 3, 1893, to the Tremont National Bank of Boston, and renewed from time to time, the last renewal in the name of the Tremont Bank having been purchased by Mr. Buffington and the same renewed in his name as stated on October 5, 1899.

The third cause of action making up Mr. Buffington's claim is a note for $35,000, on which there was paid the sum of
143 $30,729.17 on January 20, 1900, and on which when his claim was interposed there was claimed and allowed the sum of $4,270.83 and interest from April 1, 1900, at the rate of 6% per annum. This $35,000 note had been made in the name of Mr. Buffington on the 5th of October, 1899, and the said amount of $35,000 was the sum of certain notes made to the said Tremont National Bank, as follows:

A note of $25,000, dated January 20, 1892, and renewed from time to time;

A note of $5,000, dated August 12, 1893, and renewed from time to time;

And another note of $5,000, dated August 30, 1899, and renewed from time to time; the said three notes culminating in a note of $35,000, which was in turn renewed into the note of that amount dated October 5, 1899, above referred to.

The last cause of action set up by Mr. Buffington in his intervening complaint is on a note of $4500, which was dated February 1, 1900, bearing 6% interest. This note was a renewal of a renewal of a certain note dated March 13, 1894, for $5,000 in favor of the Boston National Bank, on which last named note there had been, in the course of the renewals, certain payments aggregating $500, reducing the same to the sum of $4,500 at the time the last renewal was made to Mr. Buffington.

In addition to the foregoing there was included in the claim allowed to Mr. Buffington the following:

A certain judgment entered in favor of A. T. Jenks and against the Minnesota Thresher Manufacturing Company, on May 16, 1901, for $4,378.90. The note upon which this judgment was rendered was a renewal after several intermediate renewals
144 of a note of $10,000 given on the 16th of April, 1893, to the First National Bank of Stillwater, Minnesota, upon which payments had been made, reducing the same to the amount of $4,162, for which a note was given on the 27th of August, 1900, and the said judgment was the amount of that note with interest and costs. This judgment was sold and assigned to Mr. Buffington, and represents part of his claim as finally allowed.

In addition to this Mr. Buffington had a small claim for the balance of his salary as General Manager, Secretary and Treasurer of the Thresher Company, which aggregate $192.30; and the total amount for which Mr. Buffington's claim was allowed by the court

which included interest, was $77,168.33. This allowance was made on the 11th of December, 1902.

The next claim is that of the National State Capital Bank of Concord, New Hampshire, which was allowed $18,512.14, on the 11th of December, 1902. This is made up as follows:

A certain note of $5,000 dated June 4, 1900, which was a renewal, after several intermediate renewals of a note for the same amount dated July 3, 1893. There was paid on this $5,000 note the interest to October 4, 1900, and the sum of $1,382.50 on the 14th of November, 1900, and in the intervening complaint there was claimed the sum of $3,617.50 and interest on $5,000 from October 4, 1900 to November 14, 1900, and interest on $3,617.50 being the balance due after the payment November 14, 1900.

The next cause of action of this Bank was a note for $1,000 dated July 5, 1900, which was a renewal, there being several
145 intermediate renewals of a note for the same amount dated May 31, 1893. Upon this note of $1,000 the interest was paid up to November 5, 1900.

The next item in the claim of said Bank was a note for $2,500 dated July 18th, 1900, upon which the interest was paid up to the 18th of November 1900. This note of $2,500 was the balance due, after several successive renewals, of a note of $5,000 dated October 10, 1890, upon which various payments had been made, reducing the same to the sum of $2,500.

The next item included in this claim of the Bank was a note for $5,000, dated August 13, 1900, upon which interest had been paid up to the 13th of December, 1900. This note was a renewal, after several intermediate renewals, of a note for the same amount dated May 6, 1891.

The next cause of action was on a promissory note running to said Bank, dated August 13, 1900, for the sum of $100, which was given for interest due the said Bank on August 13, 1900.

The next note included in this claim was one of $4,123.80 dated April 26, 1900, upon which interest was paid to August 27th, 1900. This was a renewal, after several payments, of a certain note of $4,582 dated March 21, 1894. This latter note had been renewed from time to time and various payments had been made, reducing it to the sum included in the note of April 26, 1900.

The claim of the National State Capital Bank was allowed, with interest, at $18,512.14.

146 The next claim is that of the Executors of Henry D. Hyde. This claim was allowed, with interest, at $139,833.15, and was made up as follows:

Mr. Henry D. Hyde, or his Executors, took up a note of $15,000 in favor of the Massachusetts Loan and Trust Company, dated July 17th, 1893. The interest on this was paid from time to time up to April 1, 1900. Mr. Hyde was the endorser on this paper.

The next item in the claim of Mr. Hyde was a note for $15,000

running to said Henry D. Hyde, dated July 24, 1893, upon which the interest had been paid from time to time up to April 1, 1900.

The third cause of action was a note made by the Thresher Company to said Henry D. Hyde, on January 1, 1894, for $5,000, upon which interest had been paid up to April 1, 1900.

The fourth cause of action was a note of $12,500 made by the Thresher Company to the Central National Bank of Boston on the 4th of January, 1897, running to said Bank, which note was a renewal, after several intermediate renewals, of a note dated May 3, 1893, for the same amount. This note was *sold by* said Central National Bank to Mr. Hyde and the interest on it was paid up to the 1st of April, 1900.

The next item was another note of $12,500 dated January 5, 1897, made by the Thresher Company to said Central National Bank, upon which the interest was paid up to April 1, 1900, and which was a renewal, with several intermediate renewals, of a note given on June 5, 1893, to said Central National Bank.

147 This last note was assigned over to the estate of Mr. Hyde by said Bank after the death of Mr. Hyde.

The next cause of action was a note of $25,000 made by the Thresher Company on January 12, 1897, to the American Loan & Trust Company of Boston, upon which the interest was paid to December 31, 1900. This note was a renewal, there being several intermediate renewals, of a note for the same amount dated May 23, 1893.

The next cause of action was a note of the Thresher Company made on the 6th of January, 1897, to said American Loan & Trust Company for the sum of $12,500, upon which interest was paid to September 30, 1899, the said note, with some intermediate renewals, having originally been made on the 4th of April, 1893.

The next cause of action was another note of $12,500 made to the American Loan & Trust Company of Boston on the 6th of January, 1897, upon which the interest was paid up to September 30, 1899, which note was a renewal, after several intermediate renewals, dated the 22nd of April, 1893; the said last three notes having been assigned to the estate of Mr. Hyde.

The next cause of action was on a note for $10,000 made on the 1st of February, 1897, to the National Bank of North America, of Boston, Mass., which was sold to the estate of Mr. Hyde, and upon which the interest was paid to the 6th of November, 1900.

This note, with some intermediate renewals, originated on

148 September 1, 1893, in a note of the same amount to said Bank.

The last cause of action in favor of said Executors was a note of $200 made on the 6th of July 1900; the interest on it was paid to October 1, 1900. This note was made directly to the said Executors, and was not a renewal of any preceding note.

The next claim is that of the Massachusetts Loan & Trust Company. This was on a judgment which was obtained upon a note dated the 2nd day of February, 1897 for $122,500 with interest, upon which the sum of $13,306.95 was paid December 21, 1897, and the interest on said note was paid up to August 31, 1900, and the further

sum of $11,948.75 was paid on November 30, 1900; and in addition there was another note of $9,900 dated the 23rd of March, 1896, upon which the interest had been paid up to August 31, 1900. This $122,500 note was the aggregate of notes made back in 1893, which amounted to said sum; and the $9,900 note was the balance of a note for $11,000 made May 8, 1894.

This claim of the Massachusetts Loan & Trust Company, with interest, was allowed for $122,431.52.

The next claim is that of the Merchants' National Bank of St. Paul, *which was the judgment creditor* instituting the proceedings upon which the Receiver was appointed. Its claim was founded upon a note for $2,900 dated the 1st day of November, 1900. This note, upon which judgment was rendered, was the balance
149 due upon certain notes renewed from time to time, with payments, which notes originally amounted to $8,124.16, and were dated in June, 1892. The claim of the Bank was allowed at $3,219.14.

The next claim is that of the Freeman's National Bank of Boston, which was a note for $1,200 dated 20th of August, 1900, upon which interest was paid up to December 20, 1900. This note originated back in 1888 in a note of $5,000, which was renewed from time to time, payments being made until it eventually resulted in the $1,200 note mentioned. The claim of the Freeman's Bank was allowed at $1,352.72.

The next claim is that of W. G. Bronson. This was upon two notes, the first $2,600 dated 30th of January, 1899, the note being originally made to the Lumberman's National Bank of Stillwater, and assigned to Mr. Bronson. This was part of a note of $5,000 which was given March 27, 1893, upon which payments had been made from time to time, reducing it to the amount stated.

The second note included in Mr. Bronson's claim is for $6,168.69 dated January 30, 1899, which was part of a $10,000 note first given on March 14, 1893, and renewed from time to time with payments. Mr. Bronson's claim was allowed at $9,929.13.

150 The next claim is that of the Manufacturers' National Bank of Boston, Mass. This was upon a note for $283.50, dated November 27, 1898, with interest paid to November 27, 1900; this note was a renewal, with intermediate renewals and payments, of a note for $315 dated March 12, 1894. The claim of the Bank was allowed at $318.13.

The next claim is that of the John Hancock National Bank of Springfield, Mass. This was upon a note for $278.10 dated March 7, 1900, which note was a renewal with intermediate renewals, and payments, of a note for $309 dated March 12, 1894. The claim of this Bank was allowed at $324.10.

The next claim is that of Elmer P. Howe and consists of two notes, as follows:

A note of $1800 dated March 7, 1900, with interest in favor of T. S. Kirkwood, of Chicago, Ill., which note was a renewal with payments of a note for $2,000 dated May 18, 1894; this note was assigned to said Howe.

A note of $360 dated March 13, 1900, with interest, which note was a renewal with payments, of a note for $400 dated June 22, 1894. The claim of said Elmer P. Howe was allowed at $2,541.18.

The next claim is that of M. F. Dickinson, 53 State Street, Boston, Mass. This was upon a note for $540 dated March 7, 1900, with interest which note was a renewal with payments of a note
151 for $600 dated June 22, 1894. This claim was allowed at $639.37.

The next claim is that of the Loan & Trust Savings' Bank of Concord, New Hampshire. This was upon a note for $2,250 dated March 16, 1900, with interest, which note was a renewal with payments, of a note for $2,500 dated March 13, 1894. This claim was allowed at $2,619.

The next claim is that of the Dime Savings — of Norwich, Conn. This was upon a note for $556.20 dated March 16, 1900, with interest, which note was a renewal with payments, of a note for $618 dated March 13, 1894. This claim was allowed at $647.41.

The next claim is that of Mrs. Mary E. Gibbs, 60 Erskine Street, Detroit, Mich. This was upon a note for $288.90, dated March 22, 1900, with interest, which note was a renewal with payments, of a note for $321 dated March 16, 1894. This claim was allowed at $336.00.

The next claim is that of Benjamin L. Bartlett, E. Deering, New Hampshire. This was upon a note for $422.10 with interest, dated March 22, 1900, which note was a renewal with payments, of a note for $469, dated March 16, 1894. This claim was allowed at $490.89.

The next claim is that of Emery L. Bates, Fiskdale, Mass. This was upon a note for $569.70 dated April 20, 1900, with interest, which note was a renewal with payments, of a note for $633
152 dated March 30, 1894. This claim was allowed at $659.90.

The next claim is that of the American Loan & Trust Company of Boston, Mass. This was upon a note for $2,340 dated May 26, 1900, upon which interest was paid to September 26, 1900, which note was a renewal with payments, of a note for $2,600 dated June 1, 1894. This claim was allowed at $2,647.71.

The next claim is that of the National Revere Bank of Boston, Mass. This was upon a note for $2,086.20 dated June 8, 1900, upon which interest had been paid up to October 8, 1900, which note was a renewal with payments of a note for $2,318 dated March 13, 1894. This claim was allowed at $2,357.05.

The next claim is that of the Wachusett National Bank of Fitchburg, Mass., and consists of four notes, as follows:

Note for $2,250 dated July 30, 1900, upon which interest was paid up to November 30, 1900, which note was a renewal with payments, of a note for $2,500 dated May 3, 1894.

Note for $9,012.50 dated July 14, 1900, upon which interest was paid up to November 14, 1900, which note was a renewal of a note for $10,000 dated February 25, 1895.

Note for $200 dated July 14, 1900 with interest.

Note for $45. dated July 30, 1900, with interest.

The claim of this Bank was allowed at $12,925.34.

153 The next claim is that of the First National Bank of Norwich, Conn. This was upon two notes, as follows:

Note for $1,650 dated August 6, 1900, upon which interest was paid up to December 6, 1900, which note was a renewal with payments, of a note for $1,836 dated March 2, 1894.

Note for $33.00 dated August 6, 1900 with interest.

The claim of this Bank was allowed at $1,885.93.

The next claim is that of the Lawrence National Bank of Lawrence, Mass. This was upon two notes, as follows:

Note for $2,064.60 dated August 20, 1900, upon which interest was paid up to December 20, 1900, which note was a renewal with payments, of a note for $2,294 dated March 12, 1894.

Note for $41.30 dated August 20, 1900, with interest.

The claim of this Bank was allowed at $2,355.21.

The next claim is that of Jersey Shore Banking Company of Jersey Shore, Pa. This was upon a note for $278.10 dated August 20, 1900, upon which interest was paid to December 20, 1900, which note was a renewal with payments of a note for $309 dated March 14, 1894. This claim was allowed at $311.00.

The next claim is that of the Merchants' National Bank of Norwich, Conn. This was upon two notes, as follows:

Note for $1,043.10 dated August 20, 1900, upon which interest was paid up to December 20, 1900, which note was a renewal with payments, of a note for $1,159 dated March 14, 1894.

Note for $20.86 dated August 20, 1900, with interest.

154 The claim of this Bank was allowed at $1,189.73.

The next claim is that of the National Bank of Marblehead, Mass. This was upon two notes, as follows:

Note for $1,043.10 dated August 20, 1900, upon which interest was paid up to December 20, 1900, which note was a renewal of a note for $1,159 dated March 14, 1894.

Note for $20.86 dated August 20, 1900 with interest.

The claim of this Bank was allowed at $1,189.73.

The next claim is that of the Blackstone National Bank of Boston, Mass. This was upon a note dated December 26, 1899, for $2,086.20 upon which interest was paid to August 27, 1900, which note was a renewal of a note for $3,318 dated March 20, 1894. This claim was allowed at $2,372.35.

The next claim is that of the First National Bank of Provincetown, Mass. This was upon two notes, as follows:

Note for $1,016.10 dated September 10, 1900, with interest, which was a renewal, with payments of a note for $1,129 dated March 13, 1894.

Note for $30.82 dated September 15, 1900, with interest.

The claim of this Bank was allowed at $1,153.27.

The next claim is that of the Bristol County National Bank of Taunton, Mass. This was upon a note for $467.10 dated September 21, 1900, with interest, and was a renewal, with payments, of a note for $519, dated March 14, 1894.

155 This claim was allowed at $545.75.

The next claim is that of the Winchester National Bank of Winchester, New Hampshire. This was upon two notes, as follows:

Note for $3,888.90 dated September 27, 1900, upon which interest was paid to March 27, 1901, which note was a renewal with payments, of a note for $4,321 dated March 1, 1894.

Note for $116.67 dated September 15, 1900, with interest.

The claim of this Bank was allowed at $4,416.33.

The next claim is that of the Mechanics National Bank of New Bedford, Mass. This was upon two notes, as follows:

Note for $2,092.50 dated October 10, 1900, upon which interest was paid up to April 10, 1901, which note was a renewal with payments, of a note for $2,325 dated March 12, 1894.

Note for $62.76 dated October 10, 1900, with interest.

This claim was allowed at $2,372.65.

The next claim is that of the Old Colony National Bank of Plymouth, Mass. This was upon two notes, as follows:

Note for $4,982.40 dated October 10, 1900, upon which interest was paid up to April 10, 1901, which note was a renewal with payments, of a note for $5,536 dated March 14, 1894.

Note for $149.46 dated October 10, 1900 with interest.

The claim of this Bank was allowed at $5,649.51.

The next claim is that of A. G. Folsom, New Hampshire. This was upon a note for $209.70 dated September 21, 1900, with payments, which note was a renewal with payments, of a
156 note for $233 dated March 13, 1894. Also a note for $6.30 dated September 15, 1900, with interest. This claim was allowed at $244.74.

The next claim is that of the Northborough National Bank of Northboro, Mass. This was upon two notes, as follows:

Note for $521.10 dated October 10, 1900, upon which interest was paid up to April 10, 1901, which note was a renewal wtih payments, of a note for $579 dated March 12, 1894.

Note for $15.63 dated October 10, 1900 with interest.

The claim of this Bank was allowed at $590.59.

The next claim is that of A. D. Putman. This was upon two notes, as follows:

Note for $348.60 dated October 10, 1900, upon which interest was paid to April 10, 1901, which note was a renewal with payments, of a note made to the First National Bank of Killingly, March 15, 1894, for $1,162; for this $1,162 note, there were also given two other notes, one held by Chas. P. Backus for $348.60 and the other held by C. S. Burlingame, for $348.60 which two notes are described below.

Note for $10.47 dated October 10, 1900 with interest.

The claim was allowed at $395.42.

The next claim is that of Chas. P. Backus. This was upon two notes as follows:

Note for $348.60 dated October 10, 1900, upon which interest was paid to April 10, 1901, which, together with the Putman note

for $348.60 and the Burlingame note for $348.60 was a re-
157 newal with payments, of a note made to the First National Bank of Killingly for $1,162 dated March 15, 1894.

Note for $10.47 dated October 10, 1900, with interest.

This claim was allowed at $395.42.

The next claim is that of C. S. Burlingame. This was upon two notes, as follows:

Note for $348.60 dated October 10, 1900, upon which interest was paid to April 10, 1901, which note together with the Putman note for $348.60 and the Backus note for $348.60 was a renewal with payments, of a note made to the First National Bank of Killingly for $1,162 dated March 15, 1894.

Note for $10.47 dated October 10, 1900, with interest.

This claim was allowed at $395.73.

The next claim is that of E. A. Norcross. This claim was upon a note for $10,000 dated July 1, 1893, upon which interest was paid up to January 1, 1901, which note is listed in the name of Amasa Norcross Estate, Fitchburg, Mass. This claim was allowed at $11,219.84.

The next claim is that of the Bank of Minnesota, Wm. H. Lightner, Receiver. This was upon a note for $1,050 dated December 7, 1896, upon which interest was paid to December 5, 1900 and was a renewal with payments, of a note for $3,500 dated December 22, 1895. This claim was allowed at $1,176.70.

The next claim is that of the Germania Bank of St. Paul, Minn.
This was upon a note for $825 dated April 1, 1899, upon
158 a note for $825 dated April 1, 1899, upon which interest was paid up to November 22, 1900, which note was a renewal with payments of a note for $4,350 dated March 29, 1893. This claim was allowed in favor of Gustav Willius, Receiver of said Bank at $926.48.

The next claim is that of the Belknap Savings Bank of Laconia, N. H.

This was upon two notes, as follows:

Note for $5,000 dated August 13, 1900, upon which interest was paid up to December 13, 1900, which was a renewal of a note dated December 20, 1893. Prior to this time it was known as the H. J. Crippen note.

Note for $100 dated August 13, 1900, with interest.

This claim was allowed in favor of W. A. Plummer, Assignee of said Bank in the sum of $5,708.93.

The next claim is that of the Gloucester National Bank of Gloucester, Mass. This was upon two notes, as follows:

Note for $270 dated October 10, 1900, which note was a renewal with payments of a note for $300 dated March 12, 1894.

Note for $8.10 dated October 10, 1900 with interest.

This claim was allowed at $314.25.

159 Defendants rest.

The COURT: You have no rebuttal evidence?
Mr. WILSON: No, sir; the proofs are closed on both sides.

Testimony closed.

Defendants' counsel renews the motion to dismiss the complaint upon the whole case, and moves for the direction of a verdict for the defendants, on all the grounds stated on the motions heretofore made to dismiss the complaint, and on the following additional grounds:

9. That no cause of action has been pleaded or proved.

10. That the cause or causes of action on many of the claims to pay which the said assessment was levied, accrued more than six years before the commencement of this action.

11. That no judgment against the said corporation was obtained on many of the claims to pay which the said assessment was levied.

12. That many of the alleged debts to pay which the said assessment was levied were not payable within two years from the time they were respectively contracted.

13. That no action was brought against the said corporation upon many of said debts within two years after they became due.

Mr. WILSON: I move your Honor to direct a verdict for the plaintiff for the sum of $3,600, and interest up to to-day, which is computed at $675, amounting together to the sum of
160 $4,275., subject to correction.

The Court denies each of the motions made on behalf of the defendants for a dismissal of the complaint, and for judgment for the defendants.

Exception by defendants.

Motion for direction of verdict for the defendants denied.

Exception by defendants.

The COURT: I will grant the motion for the direction of a verdict in favor of the plaintiff.

Exception by defendants.

In accordance with the direction of the Court, the jury render a verdict for the plaintiff for the sum of $3,600, principal, and $675., interest, amounting together to $4,275.

Defendants' counsel excepts to the direction of a verdict for the plaintiff.

Defendants' counsel moves for new trial.

Motion denied. Exception by defendants.

Stay of sixty days after entry of judgment in perfecting appeal and to make up writ of error granted defendants.

161 The foregoing contains all the evidence given and the proceedings had on the trial of this action.

And forasmuch as none of said matters and exceptions so offered and made to the rulings and directions of said Judge, and none of the evidence and other things do appear upon the record of said case, therefore, upon the prayer of the said defendants by their counsel, the said Judge has signed and settled this Bill of Exceptions, and he

doth order the same to be filed by the Clerk *nunc pro tunc*, as of the 9th day of March, 1906.

Dated, March 28th, 1906.

GEORGE C. HOLT,
District Judge.

It is consented that the foregoing be settled and signed as the bill of exceptions in this case.

Dated March 27th, 1906.

WILSON & WALLIS,
Attorneys for Plaintiff.
LIEBMANN, NAUMBERG & TANZER,
Attorneys for Defendants.

162 (Endorsed:) United States Circuit Court, Southern District of New York.—Theodore R. Converse, as Receiver of the Minnesota Thresher Manufacturing Company, Plaintiff, against Mayer S. Bernheimer and Lorin S. Bernheimer, as surviving executors of the last Will and Testament of Simon Bernheimer, deceased.—Bill of Exceptions.—U. S. Circuit Court, Southern District New York. Filed Mar. 29, 1906, John A. Shields, Clerk.

163 In the Supreme Court of the United States, October Term, 1905.

MAYER S. BERNHEIMER and LORIN S. BERNHEIMER, as surviving Executors of the Last Will and Testament of Simon Bernheimer, Deceased, Plaintiffs in Error,

against

THEODORE R. CONVERSE, as Receiver of the Minnesota Thresher Manufacturing Company, Defendant in Error.

And now come the said Mayer S. Bernheimer and Lorin S. Bernheimer, as surviving executors of the last will and testament of Simon Bernheimer, deceased, plaintiffs in error, by Liebmann, Naumburg & Tanzer their attorneys, and say, that in the record and proceedings and in rendering the judgment aforesaid, there is manifest error, in this, to wit:

(1.) The Court below erred in denying the motion of the plaintiffs in error made upon the opening of the trial for a dismissal of the complaint and for judgment for the plaintiffs in error, the defendants below, on the following grounds:

1. That the complaint does not state facts sufficient to constitute a cause of action in favor of the plaintiff against the defendants.

2. That Chapter 272 of the General Laws of Minnesota of 1899 under the alleged authority of which the assessment here sued upon is claimed to have been levied, contravenes the provisions of Section 10 of Article I of the Constitution of the United States, in that it impairs the obligation of the contracts of the stockholders of the Minnesota Thresher Manufacturing Company, and of the
164 creditors of the said corporation, and particularly of the defendants' testator and of these defendants as his executors.

3. That these defendants were not parties to the proceeding in which the said assessment was assumed to be levied, and are not bound thereby.

4. That the said Chapter 272 of the General Laws of Minnesota of 1899, and all proceedings had thereunder, so far as it is sought thereby to charge with liability or to effect these defendants, or to take their property in the amounts and for the purposes mentioned in the complaint, contravene the provisions of Section 1 of Article XIV of the Amendments to the Constitution of the United States, in that they deprive the stockholders of said corporation, who were not parties to the said proceedings, nor heard therein, nor served with process therein, and particularly these defendants, of property without due process of law, and deny to them the equal protection of the laws.

5. That the District Court of Washington County, Minnesota, had no jurisdiction to entertain the said proceedings or to appoint a receiver, or to levy an assessment therein, because the proceeding in said court was not a proceeding of the nature contemplated by, or instituted in the manner directed in, said Act of 1899, or Chapter 76 of the General Statutes of Minnesota.

6. That the plaintiff has no such title or interest as gives him a standing to maintain this action in a court of a jurisdiction other than that in which he was appointed.

7. That the said Minnesota Thresher Manufacturing Com-
165 pany was a corporation organized for the purpose of carrying on a manufacturing business, and its stockholders are exempt from liability under the provisions of Sections 3 of Article X of the Constitution of the State of Minnesota.

8. That this action was not brought within two years after these defendants or their testator ceased to be stockholders in said corporation, within the meaning of Section 55 of the Stock Corporaton Law of the State of New York.

(2.) The Court below erred in denying the motion of the plaintiffs in error, made at the close of the plaintiff's case for a dismissal of the complaint and for judgment for defendants upon all of said grounds and on the additional ground that no cause of action had been pleaded or proved.

(3.) The Court below erred in denying the motion of the plaintiffs in error made at the close of the evidence for a dismissal of the complaint on all of said grounds and on the following additional grounds:

9. That no cause of action had been pleaded or proved.

10. That the cause or causes of action on many of the claims to pay which the said assessment was levied, accrued more than six years before the commencement of this action.

11. That no judgment against the said corporation was obtained on many of the claims to pay which the said assessment was levied.

12. That many of the alleged debts to pay which the said assess-
ment was levied were not payable within two years from the
166 time they were respectively contracted.

13. That no action was brought against the said corpora-

tion upon many of said debts within two years after they became due.

(4.) The Court erred in refusing to direct a verdict in favor of the plaintiffs in error, the defendants below on all the grounds heretofore stated.

(5.) The Court erred in granting the motion of the defendant in error, the plaintiff below for a direction of a verdict in favor of said plaintiff and against said defendants, and in directing such verdict as aforesaid.

(6.) The Court erred in rendering a judgment in favor of the defendant in error and against the plaintiffs in error.

(7.) The Court erred in refusing to hold that the Laws of Minnesota for 1899, being Chapter 272 of said laws, are in contravention of the Constitution of the United States.

(8.) The Court below erred in holding that the plaintiff might recover interest, and in including interest in said judgment rendered herein, and in giving judgment in favor of the plaintiff and against the defendants for too great an amount.

(9.) The complaint does not support the judgment.

(10.) The said judgment was given in favor of the said Theodore R. Converse, as Receiver of the Minnesota Thresher Manufacturing Company, defendant in error, the plaintiff below and against
167 the said Mayer S. Bernheimer and Lorin S. Bernheimer, as surviving executors of the last will and testament of Simon Bernheimer, deceased, the plaintiffs in error, the defendants below whereas by the law of the land it ought to have been given in favor of said defendants and against the said plaintiff.

Wherefore the said plaintiffs in error pray that said judgment may be reversed, annulled and altogether held for naught, and that they may be restored to all things which they have lost by reason of the said judgment.

Dated April 9th, 1906.

LIEBMANN, NAUMBURG & TANZER,
Attorneys for Plaintiffs in Error.

(Endorsed:) Supreme Court of the U. S., October Term, 1905.—Mayer S. Bernheimer, *et al.*, etc., Plaintiffs in Error, against Theodore R. Converse, etc., Defendant in error.—Assignment of Errors.—Liebmann, Naumburg & Tanzer, Attorneys for Plaintiffs in error, 32 Broadway, New York.—U. S. Circuit Court, Southern District New York, Filed Apr. 9, 1906, John A. Shields, Clerk.

168 Circuit Court of the United States, Southern District of New York.

THEODORE R. CONVERSE, as Receiver of The Minnesota Thresher Manufacturing Company, Plaintiff,

against

MAYER S. BERNHEIMER and LORIN S. BERNHEIMER, as Surviving Executors of the Last Will and Testament of Simon Bernheimer, Deceased, Defendants.

Know all men by these presents, That we, Mayer S. Bernheimer and Lorin S. Bernheimer, as surviving executors of the last will and testament of Simon Bernheimer, deceased, as principals, and Federal Union Surety Company, as surety, are held and firmly bound unto the above named plaintiff, Theodore R. Converse as receiver of the Minnesota Thresher Manufacturing Company, in the sum of Five thousand five hundred ($5,500.) Dollars, to be paid to the said Theodore R. Converse as Receiver as aforesaid, his executors, administrators and assigns, for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 30th day of March, 1906.

Whereas the above-named Mayer S. Bernheimer and Lorin S. Bernheimer, as surviving executors of the last will and testament of Simon Bernheimer, deceased, have prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled action in the Circuit Court of the United States for the Southern District of New York, on the 14th day of March, 1906.

169 Now, therefore, the condition of this obligation is such that if the above named Mayer S. Bernheimer and Lorin S. Bernheimer, as surviving executors of the last will and testament of Simon Bernheimer, deceased, shall prosecute the said writ of error to effect and answer all damages and costs if they shall fail to make said plea good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

MAYER S. BERNHEIMER. [SEAL.]
LORIN S. BERNHEIMER. [SEAL.]

Sealed and delivered this — day of March, 1906.

FEDERAL UNION SURETY COMPANY,
By ROBERT M. NUGENT,
[L. S.] *Res. Vice-President.*

Attest:
F. STEARNS EDICK,
Res. Ass't Secretary.

STATE OF NEW YORK, *County of New York, ss:*

On the 31st day of March 1906, before me personally came Mayer S. Bernheimer and Lorin S. Bernheimer to me known and known to me to be the individual- described in and who executed the foregoing instrument and duly acknowledged to me that they executed the same.

SIGMUND WECHSLER,
Not. Pub., #41, N. Y. Co.

Form 400. 12-17-'03.

170 *Form of Affidavit, Acknowledgment, and Justification by Guarantee or Surety Company.*

STATE OF NEW YORK, *County of New York, ss:*

On this 30th day of March, one thousand nine hundred and six, before me personally came Robert M. Nugent, known to me to be the Resident Vice-President of the Federal Union Surety Company, the corporation described in and which executed the annexed bond of Mayer S. Bernheimer, and others as surety thereon, and who, being by me duly sworn, deposes and says that he resides in the City of New York, State of New York; that he is the Resident Vice-President of said Company, and knows the corporate seal thereof; that said Federal Union Surety Company is duly and legally incorporated under the laws of the State of Indiana; that said Company has complied with the provisions of the act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond (Form —) of Mayer S. Bernheimer, and others is the corporate seal of said Company, and was thereto affixed by order and authority of the board of directors of said Company; and that he signed his name thereto by like order and authority as Resident Vice-President of said Company; and that he is acquainted with F. Sterns Edick and knows him to be the Resident Assistant Secretary of said Company; and that the signature of said F. Sterns Edick subscribed to said bond is in the genuine handwriting of said F. Stearns Edick and was thereto subscribed by order and authority of said board of directors, and in the presence of said deponent; and that the assets of said Company, unincumbered and liable to execution, exceed its claims, debts and liabilities of every nature whatsoever, by more than the sum of Two hundred and fifty thousand dollars, Robert M. Nugent of New York City, N. Y., is attorney for service of process for the District in which this bond is given.

ROBERT M. NUGENT,
(Deponent's Signature.)

Sworn to, acknowledged before me, and subscribed in my presence this 30th day of March, 1906.

[L. S.]

CATHRYN F. ASPELL,
Notary Public, New York County.

Cert. filed in Kings, Queens, Suffolk, Richmond & Westchester Counties.

171 (Endorsed:) Circuit Court of the United States, Southern District of New York.—Theodore R. Converse, as Receiver, of the Minnesota Thresher Manufacturing Company, Plaintiff, against Mayer S. Bernheimer and Lorin S. Bernheimer, as surviving executors of the last will and testament of Simon Bernheimer, deceased, Defendants.—Bond for damages and costs.—Surety: Federal Union Surety Company.—Approved as to form and also as to sufficiency of sureties, with reservation, however, to the Plaintiff, of the right at any time to examine the proper officers of the Surety Company, under oath, touching its assets, liabilities and financial condition generally. E. H. Lacombe, U. S. Circuit Judge.—U. S. Circuit Court, Southern District New York, Filed Apr. 11, 1906, John A. Shields Clerk.

172 UNITED STATES OF AMERICA, *ss:*

To Theodore R. Converse, as Receiver of the Minnesota Thresher Manufacturing Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to a petition for writ of error filed in the Clerk's office of the Circuit Court of the United States for the Southern District of New York, wherein Mayer S. Bernheimer and Lorin S. Bernheimer, as surviving executors of the last will and testament of Simon Bernheimer, deceased, were petitioners, and you, the said Theodore R. Converse, as Receiver of the Minnesota Thresher Manufacturing Company, were defendant in error, and you are required to show cause, if any there be, why the judgment rendered against the said petitioners as in the said petition mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable E. Henry Lacombe, U S. Circuit Judge, this 9 day of April in the year of our Lord, one thousand nine hundred and six.

E. H. LACOMBE,
U. S. Circuit Judge.

173 [Endorsed:] E. & AC. 2458 Supreme Court of the U. S. October Term 1905 Mayer S. Bernheimer, *et al.*, etc., Plaintiffs in error, against Theodore R. Converse, etc., Defendant in error. Citation. Liebmann, Naumburg & Tauzer, Attorneys for plaintiff in error, 32 Broadway New York. We hereby, this 10th day of April 1906 accept due personal service of this citation on behalf of Theodore R. Converse, defendant in error. Wilson & Wallis, Attorneys for defendant in error. U. S. Circuit Court. Filed Apr. 11 1906 Southern District New York. John A. Shields, Clerk.

174 [Endorsed:] Supreme Court of the United States Bernheimer *et al.*, Pl'ffs in Error *vs.* Converse etc. Def't in Error.

175 In the Supreme Court of the United States.

MAYER S. BERNHEIMER, and LORIN S. BERNHEIMER, as Surviving Executors of the Last Will and Testament of Simon Bernheimer, Deceased, Plaintiffs in Error,

versus

THEODORE R. CONVERSE, as Receiver of Minnesota Thresher Manufacturing Company, Defendant in Error.

MAX DREY, CHARLES D. BERNHEIMER, and MEYER A. BERNHEIMER, as Executors of the Last Will and Testament of Isaac Bernheimer, Deceased, Plaintiffs in Error,

versus

THEODORE R. CONVERSE, as Receiver of Minnesota Thresher Manufacturing Company, Defendant in Error.

Whereas, the plaintiffs in error in the first above entitled cause have prosecuted a writ of error to the Supreme Court to reverse a certain judgment rendered in the Circuit Court of the United States for the Southern District of New York, on March 14, 1906, upon a verdict found by direction of the court in favor of the defendant in error, upon the trial of an action pending therein, wherein said defendant in error was plaintiff; and

Whereas, the plaintiffs in error in the second above entitled cause have prosecuted a writ of error to the Supreme Court to reverse a certain other judgment rendered in the Circuit Court of the United States for the Southern District of New York on said March 14, 1906, upon a verdict found by direction of the court in favor of the same defendant in error upon the trial of another action pending therein wherein said defendant in error was plaintiff; and

176 Whereas said two actions were tried on the same day and before the same judge, and the records and bills of exceptions in the two causes are substantially the same, and differ only in the names of the plaintiffs in error and in the dates of death and administration of the respective testators and in certain other matters of detail, and the said judgments are identical in amount and exactly the same issues are involved in each cause,

Now therefore, it is stipulated and agreed by and between the parties to said causes by their respective attorneys and counsel that the said causes be heard together upon a single printed record entitled in both causes and that in printing such record it shall be sufficient to print the record of the first above entitled cause in full, and to print a sufficient note or statement in addition to indicate the particulars wherein the record of the second above entitled cause differs from the record so printed in full.

The said particulars are hereby agreed to be as follows:

1st. Wherever the names of Mayer S. Bernheimer and Lorin S. Bernheimer, as surviving executors of the last will and testament of Simon Bernheimer, deceased, occur in the said record, the names of these plaintiffs in error, to wit, Max Drey, Charles D. Bernheimer

and Meyer A. Bernheimer, as executors of the last will and
177 testament of Isaac Bernheimer, deceased, are substituted therefor.

2nd. Wherever the name "Simon Bernheimer" occurs in the said record, the name Isaac Bernheimer, the testator of these plaintiffs in error, is substituted therefor.

3rd. The affidavit of service of the summons and complaint in said cause shows service of said summons and complaint on all the defendants in this cause on January 29th, 1904.

4th. Instead of paragraph XI of the amended answer in said record is substituted the following: "XI. That the said Isaac Bernheimer died on or about the 23rd day of July, 1893, leaving property in the State of Minnesota, and leaving a Last Will and Testament which was duly admitted to probate in the Probate Court of the County of Ramsey and State of Minnesota having jurisdiction of the same, on or about the 5th day of June, 1895, and letters testamentary were thereupon duly issued to the executors named therein who qualified. That thereafter and on the 5th day of June, 1895, an order was duly made by the said Court allowing six months from and after the date of the said order, in which all persons having claims or demands against the said Isaac Bernheimer were required to file the same in the said Probate Court for examination and allowance or be forever barred; and appointing the first Monday in January, 1896, at ten o'clock A. M. at a General Term of said Probate Court, to be held at the Court House in the City of St. Paul in said County as the time and place when and where the said Probate Court would examine and adjust said claims and demands, and directing that notice of such hearing be given to all creditors and persons interested in said estate by forthwith publishing the said order once in each week for three successive weeks in the Daily Pioneer Press, a daily newspaper printed and published in said County. That the said order was published at the times and in the manner in said order directed;" and the said amended answer is verified by Meyer A. Bernheimer, one of the said defendants.

5th. In defendants' Exhibit 1, which is the agreed statement of facts, instead of paragraph "twenty-fourth" thereof is substituted the following:

"Twenty-fourth. This action was commenced on January 29, 1904."

6th. Instead of paragraph designated as "I" in the said Defendant's Exhibit 1, is substituted the following:

"I. Isaac Bernheimer did in the City of New York, on July 23, 1893, leaving property in the State of Minnesota, and leaving a Last Will, which was admitted to probate in the office of the Surrogate of the County of New York, September 5, 1893, and Letters Testamentary were thereupon issued to these defendants, who duly qualified thereunder, and still remain such Executors.

The said Will of Isaac Bernheimer was duly proved and
178 recorded in the Probate Court of the County of Ramsey in the State of Minnesota, and Letters Testamentary were duly

issued by such Court to the defendants Meyer A. Bernheimer and Max Drey, who duly qualified thereunder, and still remain such executors.

On June 5th, 1895, the said Probate Court of the County of Ramsey, having jurisdiction of said Will, duly made an order which is as follows:

In Probate Court.

STATE OF MINNESOTA, *County of Ramsey*, ss:

In the Matter of the Estate of ISAAC BERNHEIMER, Deceased.

Letters testamentary on the Estate of Isaac Bernheimer, deceased, late of the County of New York, and State of New York, being granted to Meyer A. Bernheimer and Max Drey,

It is ordered, that six months be and the same is hereby allowed from and after the date of this Order, in which all persons having claims or demands against the said deceased, are required to file the same in the Probate Court of said County, for examination and allowance, or be forever barred.

It is further ordered, that the first Monday in January, 1896, at 10 o'clock A. M. at a General Term of said Probate Court, to be held at the Court House, in the City of Saint Paul, in said County, be, and the same hereby is appointed as the time and place when and where the said Probate Court will examine and adjust said claims and demands.

And it is further ordered, that notice of such hearing be given to all creditors and persons interested in said estate by forthwith publishing this Order once in each week for three successive weeks in the Daily Pioneer Press, a daily newspaper printed and published in said County.

Dated At St. Paul, this 5th day of June 1895.

By the Court:

[L. S.] G. WILLRICH,
Judge of Probate.

Notice was duly published as required by the said order.

On November 16th, 1896, the following decree was duly made by the said Probate Court of the County of Ramsey:—

In Probate Court, Special Term, November 16, 1896.

"STATE OF MINNESOTA, *County of Ramsey*, ss:

In the Matter of the Estate of ISAAC BERNHEIMER, Deceased.

It appearing to the court now here on satisfactory proofs and the evidence that the funeral charges, expenses of last sickness of said deceased, and the cost of administration of said estate have been fully paid and that no debts existing against said deceased or have been allowed by the Court and that all legacies provided for
179 by the last will and testament of said deceased have also been fully paid and satisfied, and that said estate has been fully administered as by the final account of Meyer A. Bernheimer and Max Drey, executors of said estate this day duly audited and allowed by this Court pursuant to due notice given and served will appear, reference being had thereto;

And it further appearing that due notice of the application for this final decree in said matter assigning the estate to the persons thereto entitled by law has likewise been duly given and served pursuant to the law in such case made and provided and decided;

And it further appearing that said deceased died testate and that the residue of said estate consists of the following described real estate, situate, lying and being in the State of Minnesota, in the following counties, to wit:

(Here follows description of real estate owned by said Isaac Bernheimer in the State of Minnesota.)

And it further appearing by the terms and provisions of the last will and testament of said Isaac Bernheimer, deceased, that Mayer A. Bernheimer, Charles D. Bernheimer and Max Drey therein mentioned are the persons entitled to the residue of the estate of said deceased upon the condition and trust in said will expressed.

Now therefore, on the petition of said Mayer A. Bernheimer and Max Drey, and pursuant to due notice and the law in such case provided:

It is ordered, adjudged and decreed, and this Court by virtue of the power and authority vested in the same by law, doth hereby Order, Adjudge and Decree that all and singular the above described real estate and all other the estate of said deceased in the State of Minnesota be, and the same is hereby assigned to and vested in the said Meyer A. Bernheimer, Charles D. Bernheimer and Max Drey upon the conditions and subject to the trust expressed in said last will and testament of said Isaac Bernheimer, deceased, bearing date the 14th day of December, A. D. 1892, and heretofore duly admitted to Probate in this Court without prejudice however to any lawful conveyances of said real estate or any part thereof by said persons or any of them.

To have and to hold the same together with all the hereditaments

and appurtenances thereunto belonging or in anywise appertaining to the above named persons, their successors and assigns forever,

By the Court,

G. WILLRICH,
Judge of Probate, Ramsey County, Minn.

Dated, November 18, A. D. 1896.

[Probate Court Seal.]"

180 Dated, New York, April 26, 1906.

MAYER S. BERNHEIMER AND
LORIN S. BERNHEIMER,
As Surviving Executors of the Last Will and Testament of Simon Bernheimer, Deceased, Plaintiff in Error and

MAX DREY,
CHARLES D. BERNHEIMER, AND
MEYER A. BERNHEIMER,
As Executors of the Last Will and Testament of Isaac Bernheimer, Deceased, Plaintiffs in Error,
By LIEBMANN, NAUMBURG & TANZER,
Attorneys,
LAURENCE ARNOLD TANZER, *Counsel.*
THEODORE R. CONVERSE,
As Receiver of the Minnesota Thresher Manufacturing Company, Defendant in Error,
By WILSON & WALLIS, *Attorneys,*
WILLIAM G. WILSON, *Counsel.*

181 [Endorsed:] Supreme Court of U. S. Mayer S. Bernheimer, *et al. vs.* Theodore R. Converse, as Receiver, *et al.* Max Drey, *et al., vs.* Theodore R. Converse, as Receiver, etc. Original. Stipulation as to Record.

182 [Endorsed:] File Nos. 20,233, 20,234. Supreme Court U. S. October Term, 1905. Term Nos. 731 and 732. Mayer S. Bernheimer *et al.*, Surviving Executors &c. P. E. *vs.* Theodore R. Converse, Receiver &c. Max Drey *et al.*, Executors &c., P. E. *vs.* Theodore R. Converse, Receiver &c. Stipulation as to printing record &c. Filed April 30th, 1906.

Endorsed on cover: File No. 20,233. S. New York. C. C. U. S. Term No. 278. Mayer S. Bernheimer and Lorin S. Bernheimer, surviving executors of the last will and testament of Simon Bernheimer, deceased, plaintiffs in error, *vs.* Theodore R. Converse, receiver of The Minnesota Thresher Manufacturing Company. Filed April 30th, 1906. File No. 20,233.